80-2094

No.

Office-Supreme Court, U.S.
FILED
JUN 9 1981
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

I. In the absence of any statutory authority, can a state court compel a private physician and dialysis unit, against their will and against their best medical judgment, to render medical services to an individual patient where:

(1) the patient has voluntary, alternative means for arranging for her medical care,

(2) there is no contractual relationship between the patient and either the physician or the dialysis unit,

(3) the patient does not require emergency treatment, but is seeking to compel chronic, ongoing, periodic medical treatment, and

(4) the patient poses a health hazard to herself and to her fellow patients because of her admitted drug abuse, her severe personality problems, and her dangerous and destructive behavior?

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BMA OF OAKLAND, INC.,
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VS.

BRENDA MARIE PAYTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Petitioners John C. Weaver, Jr., M.D. and Biomedical Applications of Oakland, Inc. (BMA) respectfully pray that a Writ of Certiorari issue to review the order of the California Supreme Court entered in this proceeding on March 11, 1981, compelling Dr. Weaver and BMA to render involuntary medical services.

OPINIONS BELOW

The California Supreme Court entered and filed its order compelling Petitioners' involuntary services on March 11, 1981, without opinion and without publication. (Appendix A, *infra*) No extensions for the filing of this Petition have been sought. The California Supreme Court's order reversed an unpublished order of the California Court of Appeal, District One, Division One, granting supersedeas herein. (Appendix B, *infra*) In the Petition for Writ of Supersedeas, Petitioners sought relief from an unpublished post-judgment order of the Alameda County Superior Court, dated June 30, 1980 (Appendix C, *infra*), which compels Dr. Weaver and BMA to render medical services to a particular individual against their will, pending that individual's appeal of judgment in Petitioners' favor. (Appendix D, *infra*) That unpublished judgment was supported by Findings of Fact and Conclusions of Law which found that the individual seeking to compel services has no legal or equitable grounds for doing so. (Appendix E, *infra*)

JURISDICTION

The opinion of the California Supreme Court having been filed on March 11, 1981, there having been no petition for rehearing, gives rise to this timely Petition for Certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Dr. Weaver's and BMA's case rests squarely upon Section 1 of the Thirteenth Amendment which provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
> U.S. Const. amend. XIII.

Petitioners also rely on 42 U.S.C. §1994 as the federal statute enforcing the Thirteenth Amendment, declaring any action by the state compelling involuntary labor to be null and void. (Text in Appendix F, *infra*)

STATEMENT OF THE CASE

This is the first case to come before this Court testing a state's power to order an otherwise free person into the involuntary servitude of another individual since Dred Scott petitioned for his freedom in 1857. *Dred Scott* v. *Sandford*, 19 How. 393, 60 S.Ct. 691, 15 L.Ed. 691 (1857). Petitioner John C. Weaver, Jr., M.D., is a board-certified nephrologist in the private practice of medicine in Oakland, California. Those of his patients who suffer from renal failure, including respondent, receive dialysis[1] at an outpatient dialysis unit owned and

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1 Hemodialysis (or dialysis) is the medical treatment (continued)

operated by Petitioner BMA.[2]

A. A History of Petitioners' Attempt to Provide Care to a Totally Unmanageable and Disruptive Patient Whose Conduct Endangers the Health and Lives of Other Patients

For the past six years, Dr. Weaver and BMA have attempted to provide regular dialysis to respondent Brenda Payton. Ms. Payton admits to a 15-year history

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given to persons with kidney failure. In the dialysis process, the patient's circulatory system is connected to a special machine through which the blood is passed. Using salts and osmotic membranes, artificial kidneys in the machine drain excess liquids from the blood and cleanse the blood of its accumulated impurities and toxins. Since hemodialysis patients have no kidney function of their own, they must adhere to medically prescribed dietary restraints and limits on liquid intake. They must also follow a regular dialysis schedule, using the machine for a prescribed period of time at regular intervals to avoid the dangers of accumulating too much liquid and too many toxins in their blood. If, however, dialysis is administered regularly and if the patient cooperates with the regimen and therapy, dialysis can substitute for kidney function.

[2] BMA is a corporation which operates an outpatient dialysis unit in Oakland, California; it does not have the authority under California law to practice medicine. Cal. Bus. & Prof. Code section 2008 (West 1972). Nor do BMA's nurses and technicians have the professional training or skill to prescribe the complicated course of treatment for patients with renal failure. To use BMA's dialysis machines, a patient must be under the care of a physician to prescribe the exact treatment to be received based on the physician's assessment of the patient's condition.

of drug abuse and to emotional problems. Petitioners have nevertheless tried to render care in spite of Ms. Payton's complete failure to abide by the medical and dietary regimen necessary for dialysis, and despite her continuous antisocial conduct to her fellow patients, nurses, and physicians. She indulges in self-destructive behavior, lewdly exposes her genitals to other patients and staff in the dialysis unit, and verbally abuses those around her. Her behavior is so extreme that she requires almost one-to-one nursing, thereby depriving other patients of needed care. On countless occasions she has disturbed other patients and interfered with their care. These episodes have not taken place behind closed doors, but in an open room where 30 or more patients are being dialyzed at the same time.

Ms. Payton's failure to cooperate with the medical regimen necessary for dialysis treatment endangers her own health and jeopardizes care for others. For example, she admits to chronic barbiturate abuse. Barbiturates are normally metabolized and excreted by the kidneys, so the drugs she takes between dialysis sessions remain in her system until she is dialyzed again. Her drug abuse significantly complicates her medical problems. Barbiturates lower blood pressure, as does dialysis; the combination of the two can cause dramatic decreases in blood pressure, seizures and convulsions. In such fits, and at other times when intoxicated, she will disconnect the dialysis needle from her shunt, spewing blood onto the

dialysis unit floor, and contaminating the dialysis machine. Her seizures and drug-related emergencies make extraordinary demands on the BMA staff, and as a result, care for other patients must suffer.

Furthermore, Ms. Payton grossly abuses her diet and ignores necessary limitations on liquid intake. Since she has no kidney function, her failure to follow the dietary and liquid regimen is dangerous and requires extraordinary care.

Compounding this problem, Ms. Payton also misses, or is late for, nearly every dialysis treatment. Without dialysis at regular intervals for prescribed periods, it is virtually impossible for Petitioners to control the accumulation of fluids and toxins in Ms. Payton's system. Her erratic schedule is not only detrimental to her care, but it also delays and disrupts the treatment for the 31 other patients who are connected to the same central machine and scheduled to commence treatment at the same time. When this patient is late, nurses and technicians must divert their attention from the other patients to her, and delay treatment for the others. When she misses dialysis sessions altogether, the machinery which has been set up for her is not used, and medical supplies and staff time are wasted.

The combination of her disregard for the dialysis schedule and dietary and liquid regimen often leads to over-accumulation of fluid wastes in her system, making

it virtually impossible to maintain any semblance of regular, stable care. As a result she will appear at unscheduled and unpredictable times at the local emergency room demanding dialysis.[3] When her self-generated emergencies arise, Dr. Weaver is called by the emergency room, and frequently has to come to the hospital. In effect, therefore, Dr. Weaver is on 24-hour call to this patient, disrupting his medical practice, his care for his other patients, his home life and his freedom at large.

B. To Protect Other Patients, Dr. Weaver and BMA Lawfully Discharged Ms. Payton From Their Care

Because of Ms. Payton's persistent pattern of uncooperative and disruptive behavior from the outset of the patient-physician relationship, Dr. Weaver notified respondent by letter in December of 1978 that he would no longer serve as her physician. The doctor temporarily

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3 On one notable occasion she arrived at the emergency room having called an ambulance to provide her a ride (she was not in an emergency condition), demanding immediate dialysis—but not until she finished the hamburger and french fries she had brought with her for dinner. Lest this somewhat humorous picture be misleading, the uncontradicted testimony below was that the demanding and outrageous behavior of respondent disrupts the orderly operation of the emergency room and endangers other patients who are more critically ill or injured.

relented, however, and continued to care for her for a few months, until her outrageous behavior again caused him to notify her that the patient-physician relationship would not be maintained beyond April, 1979. Regular outpatient dialysis services in fact were terminated,[4] pursuant to this notice and no patient-physician relationship existed as of April 5, 1979.

C. Ms. Payton's Suit to Compel Services

Ms. Payton's response to the April, 1979, termination of services was to file a "Writ of Mandate" in state court purporting to compel Dr. Weaver and BMA to resume care. In the hope that her conduct might change for the better, Petitioners agreed to render temporary dialysis service *if* Ms. Payton were cooperative and not abusive. The stipulation imposed six express conditions on her behavior. The stipulation was to no avail. As the trial court later found, she wilfully and knowingly violated *each* of those conditions.[5]

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[4] Dr. Weaver has always rendered emergency renal care when necessary, and emergency care is not an issue in this case. The issue herein is the rendering of chronic ongoing care *in futura*. The trial court concluded that Ms. Payton "suffers from end stage kidney disease which in and of itself is not an emergency condition." (Appendix E, infra, p. 7)

[5] Specifically, Ms. Payton's treatment was conditioned upon her agreement to:
(continued)

Because of her continuing intolerable and dangerous behavior, Dr. Weaver sent his final notice to Ms. Payton terminating the patient-physician relationship in March, 1980. Again, regular outpatient dialysis ceased, and again Ms. Payton responded with legal proceedings attempting to force Dr. Weaver and BMA to resume treating her. From the outset of the proceedings Dr. Weaver and BMA vigorously asserted their rights under the Thirteenth Amendment, and their right to protect their other patients from this one. Before, during and after the evidentiary hearing, Petitioners repeatedly sought dismissal of respondent's action on the ground that any order compelling involuntary services was beyond the power of the court to grant. Over strenuous objection the trial judge ordered Dr. Weaver and BMA to provide care during the hearing.

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1) keep all appointments at their scheduled time;
2) refrain from all use of alcohol;
3) refrain from all use of drugs, except those prescribed by her physician;
4) maintain prescribed dietary habits;
5) in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen; and
6) enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

(Appendix E, infra, p. 3)

Finally, after a four-day hearing, the trial court found no legal or equitable basis for compelling the service of Dr. Weaver or BMA.[6] (The complete Findings

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6 The trial court's Findings of Fact provided:

> 13. Ms. Payton's failure to meet the above conditions (of the stipulation) has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.
>
> 14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of (Ms. Payton) under the facts shown herein. (Appendix E, infra, p. 6)

Based on the foregoing findings, the court concluded:

> 5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, (Ms. Payton) has no legal right to compel medical service from any of the Respondents for chronic or regular care of her kidney

(continued)

of Fact and Conclusions of Law may be found at Appendix E, *infra*.) Judgment was entered accordingly. (Appendix D, *infra*)

Petitioners stress that no patient-physician relationship or other contract of employment existed at the time Ms. Payton brought her suit, and the trial court so concluded.[7] Further, the trial court found that Ms. Payton's condition did not constitute an emergency[8] and did not justify further imposition of an involuntary patient-physician relationship.[9] The court concluded that

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problems through dialysis. (Appendix E, infra, p. 9)

7 The trial court concluded:

8. Dr. John C. Weaver, Jr., has given sufficient notice to (Ms. Payton) and has discharged all obligations imposed by the patient-physician relationship with her. (Appendix E, infra, p. 10)

8 Specifically, the trial court found:

20. (Ms. Payton) suffers from end stage kidney disease which in and of itself is not an emergency condition. Although as a result of her condition, (Ms. Payton) requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health & Safety Code section 1317 or otherwise. (Appendix E, infra, p. 8)

9 The conclusion of the trial court was that:

(continued)

neither Dr. Weaver nor BMA had any further obligation to Ms. Payton, and she was "not without means to arrange for her own care."[10]

D. The Post-Trial Order and Writs

In spite of the judgment and findings wholly in Petitioners' favor, the trial court subsequently and irregularly entered a post-trial order purportedly compelling Dr. Weaver and BMA to render care pending Ms. Payton's appeal of the judgment. In effect, therefore, after specifically concluding that it had no legal or equitable basis for granting such relief,[11] the trial court entered

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7. There is no present duty on the part of any respondent requiring any one of them to provide Petitioner with regular outpatient dialysis treatment.
(Appendix E, infra, p. 10)

10 The trial court found:

21. (Ms. Payton) has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. (Ms. Payton) therefore is not without means to arrange for her own care. (Appendix E, infra, p. 8)

11 The trial court concluded:

5. Upon weighing of the equities amongst the various parties involved, including other

(continued)

the equivalent of a mandatory injunction compelling Petitioners' services for the years it will take to resolve this appeal.

Dr. Weaver and BMA petitioned the California Court of Appeal for a Writ of Supersedeas, asserting Petitioners' rights under the Thirteenth Amendment, and the right to protect their patients. The Court of Appeal granted that writ without opinion on February 20, 1981. (Appendix B, *infra*) Ms. Payton then petitioned for hearing in the California Supreme Court. Without opinion, the California Supreme Court reversed the Court of Appeal and reinstated the trial court's order for ongoing care until the appeal is resolved.

The California Court of Appeal has informed the undersigned that it will not even hear oral argument on the appeal for at least two years, and probably more. During that time, Dr. Weaver and BMA, under penalty of imprisonment, must render personal services against their best medical judgment.

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patients of the various health care providers, (Ms. Payton) has no legal right to compel medical service from any of the Respondents for chronic or regulare care of her kidney problems through dialysis.
(Appendix E, infra, p. 9)

REASONS FOR GRANTING THE WRIT

I. This Case Raises Questions of National Public Concern as Well as Grave Issues Pertaining to the Protection of Constitutional Rights

The question raised by this case, "Can a patient compel a particular doctor and dialysis unit to render services to that patient against his or her will?", is of concern to all patients, physicians, and health care providers throughout the United States. This case has been the subject of wire service news stories as well as articles in the medical professional literature. Within the next 30 days, the American Union of Physicians and Dentists will file an amicus curiae brief, as will the Renal Physicians' Association (the professional society of nephrologists). Other amici curiae may join in expressing their concern over the impact of the California Supreme Court's order on the rendering of health care generally and its special effect on dialysis providers and patients.

Petitioners, however, come before this Court seeking protection of their individual constitutional right to be free from forced personal labor. Preservation of this right is of universal concern to all citizens. Could a state conscript an individual bricklayer, milkman or textile worker to perform personal services for a given employer? Could any of these conscriptees be required to work

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under conditions they deem intolerable, or for a master whom they find too difficult or dangerous to serve?

The California Supreme Court has entered such an order against Dr. Weaver and BMA personnel. Dr. Weaver's involuntary servitude is particularly burdensome: In effect, he must be on call twenty-four hours a day, 365 days a year, to respond to this particular patient's demands.

Although the Thirteenth Amendment does not require Petitioners to justify their desire to cease rendering services to this individual,[12] Petitioners demonstrated below by uncontradicted proof that the patient-physician relationship has irremediably broken down and that they can no longer effectively care for this patient. Petitioners showed, and the trial court found, that this patient disrupts the orderly treatment of other patients and jeopardizes their health. Ms. Payton herself admits and avers that she is a drug addict with emotional problems who will not adhere to her prescribed dietary or medical regimen and schedule. Accordingly, Petitioners

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12 One must be permitted to quit the personal employ of another for good reason, bad reason or no reason at all. *Laucks v. Star City Glass Co.*, 551 F.2d 745, 747 (7th Cir. 1977); *Sarkes Tarzian, Inc. v. Audio Devices, Inc.*, 166 F.Supp. 250, 267 (S.D. Cal. 1958), *aff'd.*, 283 F.2d 695, *cert den.*, 365 U.S. 869, 81 S.Ct. 903, 5 L.Ed. 2d 859.

are unable to render effective medical treatment to Ms. Payton.

The trial court found that Petitioners had met all of their legal and ethical obligations in discharging Ms. Payton as a patient. Specifically, the lower court found that Ms. Payton is not in an emergency condition, but instead is in need of chronic care, which she has alternative means of arranging.[13]

If the purpose of the California Supreme Court's order purportedly is to preserve the subject matter of the appeal, i.e., Ms. Payton's life, it is respectfully submitted that she has the primary responsibility for taking the

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[13] That finding, in itself, answers Ms. Payton's sole contention that she needs medical care to save her life. That care is available from sources other than BMA and Dr. Weaver. For example, if she entered a drug therapy program in a nearby county, it would arrange for her dialysis, or she could voluntarily petition the court to appoint a conservator whose sole function would be to arrange for her medical care. Cal. Wel. & Instit. Code sections 5357, 5358; Prob. Code sections 1800, 1801(d) (West 1972). Instead of filing such a voluntary petition, she has filed a lawsuit against a specified private individual physician and dialysis unit to impose on them the burden of providing her care. Even if voluntary alternatives were not available to Ms. Payton (and they certainly are), that would still not justify the state's coercion of involuntary personal service. If the state has an interest in securing care for Ms. Payton, it must satisfy that interest through established state institutions using state resources, and not unfairly conscript the unwilling personal services of private persons.

steps within her control to assure that she gets care. It is wholly antithetical to the concept of liberty that one individual in our society may ignore the voluntary alternative steps that he or she might take to protect his or her interests while imposing on other individuals insufferable conditions of involuntary servitude. Ms. Payton's preference for one particular doctor does not justify binding Dr. Weaver to her personal service, and could only be sanctioned in a state permitting slavery.

This case thus transcends the relationship of doctor to patient and goes to the heart of the relationship of the state to the individual. The highest court of California has singled out one physician and one dialysis unit, and has placed them in the involuntary service of a single individual for at least the next two years. Using its power of contempt, the court has directed Petitioners to render service or go to jail. Certiorari should be granted so that our courts will remain instruments of freedom, not shackles of bondage.

II. The California Supreme Court's Order Unconstitutionally Places Petitioners in Involuntary Servitude

With every passing day, Dr. Weaver and BMA personnel must suffer an egregious violation of their basic constitutional right to be free to choose for whom they work. Because of the California Supreme Court's order,

under pain of imprisonment, Petitioners may not quit the employ of Brenda Payton.

Without doubt, Petitioners find themselves bound in involuntary servitude:

> It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude,—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction.
> *Arthur* v. *Oakes*, 63 F. 310, 317-18 (7th Cir. 1894).

Though the Thirteenth Amendment was originally passed in order to assure that the newly-freed blacks were given their full freedoms of citizenship, its purpose and meaning are broader:

> The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. . . .
> *Pollock* v. *Williams*, 322 U.S. 4, 17, 64 S.Ct. 792, 88 L.Ed. 1095 (1944).

The words "involuntary servitude" thus have a larger meaning than slavery:

> The plain intention was to abolish slavery of whatever name and form and all its badges

> and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.
> *Bailey v. Alabama*, 219 U.S. 219, 241, 31 S.Ct. 145, 55 L.Ed. 191, 201 (1911).

Thus, courts have long recognized that freedom from compelled personal service is fundamental to the individual liberty constitutionally guaranteed to all citizens.

The Thirteenth Amendment was effectively used as a shield to protect individual freedom of labor in *Bailey v. Alabama*, 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 191 (1911). In *Bailey*, an Alabama statute created a presumption of criminal fraud where a worker had contracted and was paid for work which he subsequently refused to perform. Under the statute, the threat of imprisonment served as a tool of coercing labor. Justice Hughes, in *Bailey*, observed that "the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station." 219 U.S. at 244, 31 S.Ct. 145, 55 L.Ed. 191. The state may not "authorize its constabulary to prevent the servant from escaping." 219 U.S. at 244. Neither can it "punish the servant as a criminal for the mere failure or refusal to serve." *Id.*

Plainly, the State of California cannot hold Dr. Weaver to Brenda Payton's personal service under pain of

imprisonment for contempt of court. Yet, that is precisely what the California Supreme Court has ordered in this case: Without convicting Petitioners of any crime whatsoever, the California Supreme Court is using the threat of state imprisonment to force Dr. Weaver and BMA to render personal services involuntarily to Ms. Payton.[14]

The California order attempting to enforce Petitioners' "involuntary service or labor" is a nullity under 42 U.S.C. §1994. That statute specifically provides that "all . . . orders . . . of any . . . State," which attempt to enforce involuntary service "in liquidation of any debt or obligation *or otherwise* are declared null and void." Emphasis added. Although primarily aimed at the

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[14] This Court has universally drawn a distinction between *personal service*, required from one individual to another, and the right of the government to require *general duty* for the *general good*. Therefore, the issues presented herein involve no challenge, and have no relationship, to the validity of general requirements for "all able bodied" citizens to repair highways. *Butler v. Perry*, 240 U.S. 328, 36 S.Ct. 258, 60 L.Ed. 672 (1916), the constitutionality of draft laws, *Selective Draft Law Cases*, 245 U.S. 366, 38 S.Ct. 159, 62 L.Ed. 349 (1918), the validity of a tax on an employee's wages, *Abney v. Campbell*, 206 F.2d 836 (5th Cir. 1953), or similar general service requirements.

Rather, this Court consistently has noted *coerced personal service*—from one specified individual to another—is the evil addressed by the Thirteenth Amendment, and the condition which it puts beyond the power of any person—or court—to compel.

elimination of the effects of peonage, the purpose of the statute has been construed broadly to nullify any private or state act imposing involuntary service. In the *Peonage Cases*, 123 F.671, 675 (M.D. Ala., 1903), the court noted that the use of the word,

> '[o]therwise', in contradistinction to 'any debt or obligation' cannot mean less than that the . . . obligation upon which the claim to compulsory service is based need not be real or of legal validity, but includes cases when the 'obligation,' performance of which is coerced by labor against the will of the servitor, is unfounded, concocted, or illegal, or arises from agreements or dealings with strangers claiming the right to his service. . . .

Thus, under any guise or form whatsoever, the resulting evil of peonage—involuntary servitude—is outlawed by section 1994. *Id.* The congressional policy underlying the statute "means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor." *Pollock v. Williams*, 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095 (1944). Accordingly, any order attempting to do so is declared "null and void" under section 1994.

III. An Individual Must Be Free Not to Work Under Intolerable Conditions

The Constitution's prohibition against involuntary servitude prevents an intolerable evil in a free society—the inability of a worker to escape from another's service

regardless of how harsh the conditions may be. *Pollock* v. *Williams*, 322 U.S. 4, 64 S.Ct. 792, 88 L.Ed. 1095 (1944). Dr. Weaver and BMA are unable to quit their employment in spite of intolerable conditions. This relationship is not only oppressive to Petitioners, but dangerous to their other patients. In spite of Petitioners' uncontradicted showing of the burdens and dangers, Petitioners' plea to be relieved from this unworkable edict went unheeded by the California Supreme Court. Stripped of the protections guaranteed by the Thirteenth Amendment, Petitioners have no further recourse than this Petition:

> [I]n general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome working conditions of work. *Pollock* v. *Williams*, 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095 (1944).

This Court is the court of last resort, the last place to which these Petitioners can turn to be released from their involuntary servitude under intolerable conditions.

IV. Certiorari Should Be Granted Because the California Supreme Court Order Is Shockingly Wrong, Violating the Fundamental Principle that Equity Will Not Specifically Enforce a Contract for Personal Services

The California Supreme Court not only has taken away Dr. Weaver's liberty, but it has substituted its own lay opinion for the physician's considered professional judgment in the interest of the safety of all his patients. It is uncontroverted that Ms. Payton is a disruptive and dangerous patient whose aberrant behavior affects the health and lives of other patients. Dr. Weaver, exercising his professional judgment and prerogatives, has a right and, indeed, an obligation to protect those other patients. *E.g.*, *Doe* v. *Bolton*, 410 U.S. 179, 93 S.Ct. 1410, 35 L.Ed 201 (1973); *Tarasoff* v. *Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976). When patients seek treatment from a physician or facility, they have a reasonable expectation that the physician or facility will not subject them to known danger from another patient. *Cf.*, *Tarasoff*, *supra*; *Jones* v. *U.S.*, 399 F.2d 936 (2d Cir. 1968); *Vistica* v. *Presbyterian Hosp.*, 67 Cal. 2d 465, 432 P.2d 193, 62 Cal. Rptr. 577 (1967). Yet, Ms. Payton's conduct consistently presents such a danger.

Under the California Supreme Court order, how can Dr. Weaver and BMA be expected to fulfill their professional obligations to provide safe health care to their

other patients? The effect of that order is to compel Dr. Weaver and BMA to treat Ms. Payton regardless of how extreme her behavior, and how dangerous she is. The order thus subjects Petitioners' patients involuntarily to a known risk.

Even in areas less sensitive than medical treatment, courts of equity have universally declined to use a mandatory injunction to enforce continued personal services. Courts decline to do so because they cannot act as the day-to-day supervisors of the employment relationship.[15] In *Arthur* v. *Oakes*, 63 F. 310 (7th Cir. 1894),

---

15 Petitioners' argument does not reach the power of the courts to appoint counsel, since "(a)ttorneys are officers of the court and are bound to render service when required by (court) appointment." *Powell v. Alabama*, 287 U.S. 45, 73, 77 L.Ed. 158, 172 (1932). Further, the courts can supervise the services of an attorney in a pending case. Thus, the law regarding court control over attorneys has no bearing on this case.

Yet, this Court has even limited the power to appoint counsel in cases involving "actual imprisonment", rather than the "mere threat" thereof. *Scott v. Illinois*, 440 U.S. 367, 373, 99 S.Ct. 1158, 59 L.Ed. 2d 383 (1979); and, in civil cases, the federal courts have noted the impact of the Thirteenth Amendment upon the Sixth Amendment right to counsel, holding that the courts have no more right to coerce the involuntary service of counsel in a matter they deem unmeritorious than they would have "to make an order compelling these defendants, had they not been convicted, to pick cotton for a private individual." *United States v. Leser*, 233 F.Supp. 535, 538 (S.D. Cal. 1964); *accord*, *Allison v. Wilson*, 277 F.Supp. 271 (N.D. Cal. 1967); *In the Matter of* (continued)

where the court overturned a mandatory injunction compelling railroad workers to work under a receivership, the Court stated the issue as follows:

> [W]hether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. . . . In *Powell Duffryn Steam-Coal Co. v. Taff Vale R. Co.*, 9 Ch. App. 331, 335, Lord Justice James observed that when what is required is not merely to restrain a party from doing an act of wrong, but to oblige him to do some continuous act involving labor and care, the court has never found its way to do this by injunction. In the same case Lord Justice Mellish stated the principle still more broadly, perhaps too broadly, when he said that a court can only order the doing of something which has to be done once for all, so that the court can see to its being done.
>
> The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services. . . .
> 63 F. 310 at 317-318.

Thus, courts have long recognized the practical limitations on their ability to compel one person to render personal services to another. *Rutland Marble Co. v.*

Nine Applications for Appointment of Counsel in Title VII Proceedings, 475 F.Supp. 87 (N.D. Ala. 1979).

Ripley, 10 Wall. 339, 363, 19 L.Ed. 955, 961 (1870); *Texas & P. R. Co. v. City of Marshall*, 136 U.S. 393, 405, 34 L.Ed. 385, 390 (1890); *Lumley v. Wagner*, De G.M. & G. 604, 42 Eng. Rep. 687 (Ch. 1852); Restatement, Contracts, §379.

Ironically, the supervision needed in this case is not to assure the performance of the party rendering services, but to gain the cooperation of the party receiving the services. Dr. Weaver seeks to quit Brenda Payton's personal service because *he* cannot adequately supervise her to ensure her welfare and that of the other patients; how can the court supervise her when the on-site staff cannot adequately do so? In the absence of such supervision, the state should not interject the presence of a dangerous patient into a dialysis unit serving 30 or more patients in the same room at the same time. Accordingly, certiorari should be granted to enforce a prime rule of equity, and restore to BMA's patients their right to medical care supervised by physicians, rather than the court.

CONCLUSION

By any traditional test, the California Supreme Court has violated the basic rule of equity that ongoing personal services may not be compelled by mandatory injunction. The rationale for that rule (which is the inability of the court to supervise the involuntary

relationship) is best underscored by the dangers facing Petitioners' other patients—dangers that cannot be adequately controlled by Petitioners, let alone the court. For at least the next two years the treatment of patients at BMA will be threatened by their involuntary exposure to Ms. Payton's continuing misconduct. They will be subjected to that danger as long as the California courts replace Dr. Weaver as the final medical authority in BMA's dialysis unit.

The California Supreme Court, through its order, has also violated the heart of the Thirteenth Amendment by coercing personal services from one individual to another under threat of imprisonment. The California court has made the quitting of another's personal service, without more, an imprisonable offense. In doing so, it has created a small island of slavery in a country which has not seen slavery for over a century.

Petitioners' freedom must be restored.

DATED: June 8, 1981.

Respectfully submitted,

CHARLES F. BOND, II
Attorney for Petitioners

MARK I. SCHICKMAN
MARRS A. CRADDICK
Of Counsel

APPENDIX A

1st Civil No. 50094

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PAYTON, Plaintiff, Respondent and Appellant

v.

WEAVER, JR., ET AL., Defendants, Appellants and Respondents.

Petition for hearing is granted, and the cause and defendants' petition for supersedeas are transferred to this court. The petition for writ of supersedeas is denied. The cause is re-transferred to the Court of Appeal, First District, Division One, for determination of the pending appeals. The order of the Alameda County Superior Court, dated June 30, 1980, shall remain in effect during the pendency of the appeals.

The motion for reconsideration of the temporary stay granted February 24, 1981 is denied. The motion to join Alameda County as a party to this proceeding is denied.

BIRD,
Chief Justice

TOBRINER,
Justice

MOSK,
Justice

RICHARDSON,
Justice,

NEWMAN,
Justice

Justice

Justice

Filed on March 11, 1981

APPENDIX B

Court of Appeal of the State of California

In And For The

First Appellate District

Division One

Brenda Marie Payton, Plntf,., Rspdt., and Applt.	)	No. 50094
vs.	)	Alameda Superior Court No. 520530-5
John C. Weaver, Jr., M.D., et al., Dfdnts., Applts., and Rspdts.	)	

BY THE COURT:

The petition for writ of supersedeas is granted. The effect of the order dated June 30, 1980, for stay of execution of judgment and continuation of temporary order in Alameda County Superior Court Action No. 520530-5 Payton v. Weaver, et al., is hereby stayed pending final determination of the appeal on file herein.

Dated February 20, 1981

Elkington, J. Acting P.J.

APPENDIX C

Wilson & Casey
Law Offices
927 Broadway
Oakland California 94612
(415) 465-6511

Attorney for Petitioner

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON, Petitioner, vs. JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA of OAKLAND, INC., AND DOES I through XX, inclusive, Respondents.	NO. 520530-5 ORDER FOR STAY OF EXECUTION OF JUDGMENT AND CONTINUATION OF TEMPORARY ORDER

This matter came on regularly for hearing before the above entitled Court of June 23, 1980, pursuant to Petitioner's Motion of Stay of Execution of Judgment and Continuation of Temporary Order made orally on June 18, 1980 and filed on June 23, 1980. WARREN B. WILSON and JOANNE F. CASEY appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos and Stromberg, by ROBERT RUSKY, appeared as attorney for Respondents ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry,

by JOHN H. DICKERSON, appeared as attorney for Respondents PROVIDENCE HOSPITAL; CHARLES BOND as attorney for Respondents, JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC.

The Court considered Petitioner's motion and heard oral arguments on the matter from all parties and the cause was submitted for decision.

In making the following orders to preserve the status quo pending appeal, the Court has taken into consideration the gravity of the consequences to Petitioner of its order and also the possibility that Petitioner, without adequate medical treatment, could die before her appeal is perfected, thereby rendering the issues of the appeal nugatory.

Under the inherent power to exercise reasonable control over all proceedings connected with the litigation before it, vested in this Court under Code of Civil Procedure §187 and also under the scope of the trial court's authority as specifically ennunciated in City of Pasadena v. Superior Court, 157 Cal. 781 (1910), the Court makes the following orders:

1. That execution of its judgment and order dated June 30, 1980, is hereby stayed pending the perfection of Petitioner's appeal.

2. That the temporary order made by this Court on April 10, 1980 that Respondents JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC. continue to provide hemo-

dialysis to Petitioner on a regular basis be continued pending Petitioner's appeal.

3. That Petitioner is to cooperate with Respondent JOHN C. WEAVER. M.D. and follow all of his orders and directions to the best of her ability to do so.

Dated: June 30 ,1980.

RICHARD BARTALINI
Judge of the Superior Court

APPENDIX D

HANSON, BRIDGETT, MARCUS,
VLAHOS & STROMBERG
STEPHEN B. PECK
333 Market Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 777-3200

FILED
Jun 30, 1980
Rene C. Davidson,
County Clerk
By _____
Deputy

Attorneys for Respondents
ALTA BATES HOSPITAL and HERRICK HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON,

Petitioner,

vs.

JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA OF OAKLAND, INC., and DOES I through XX, inclusive,

Respondents.

NO. 520530-5

JUDGMENT DENYING PEREMPTORY WRIT OF MANDATE AND INJUNCTION

Entered In
Judgement Book
Book (Reel)
601 Pg 3
Jun 30 1980
Rene C. Davidson,
County Clerk

This matter came on regularly for hearing before the above-entitled court on April 10, 11 and 17, 1980, the Honorable Richard Bartalini, Judge Presiding, pursuant to the verified Petition, Amended Petition and Second Amended Petition of BRENDA MARIE PAYTON and the

alternative writ of mandate issued under the seal of this Court and served on respondents in the manner provided by law. Warren Wilson and Joanne Casey appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos & Stromberg, by Stephen B. Peck, appeared as attorneys for Respondents, ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by Phillip Berry appeared as attorneys for Respondent PROVIDENCE HOSPITAL; Charles Bond, Professional Law Corporation, by Charles Bond and Robin G. Pulich appeared as attorneys for Respondents BMA OF OAKLAND, INC., and DR. JOHN C. WEAVER, JR.

The record of the proceedings before the Honorable Richard Bartalini having been received into evidence and having been examined by the Court, the Respondents ALTA BATES HOSPITAL, HERRICK HOSPITAL and PROVIDENCE HOSPITAL having filed an answer to the Petition, Amended Petition and Second Amended Petition, each side having submitted memoranda of points and authorities in support of their respective contentions, fully argued the matter orally before this Court, and the Court having heard the testimony of BRENDA MARIE PAYTON, Ronald Reuss, Wayne Hardwick, M.D., Donald Block, M.D., James Rosen, M.D., JOHN C. WEAVER, JR., M.D., Leroy Lewis, Craig Dennis, M.D., Margaret Kelley, and Juanita Hill, the cause having been submitted for decision,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioner, BRENDA MARIE PAYTON, requests that a peremptory writ of mandate and a permanent injunction be issued herein against Respondents JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL and BMA OF OAKLAND, INC. be and hereby are denied, for the reason that said Respondents are found to have no legal duty to provide, or to continue to provide, non-emergency regular hemodialysis treatements (sic) to Petitioner.

2. The alternative writs of mandate heretofore issued in this action be and hereby are discharged; and

3. Each side shall bear their own costs and attorneys' fees in this action.

DATED: Jun 30, 1980

_____
THE HONORABLE RICHARD BARTALINI

Judgment entered on _____, 19__, in the Judgment Book, Volume No. _____, Page _____.

_____, Clerk

By _____
Deputy Clerk

APPENDIX E

BERRY & BERRY
A Professional Corporation
1221 Broadway, Suite 1880
Oakland, California 94612
Telephone: (415) 835-8330

Attorney for Defendant
PROVIDENCE HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON NO. 520530-5

Plaintiff,

v.

JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, et al.

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing and extensive oral and documentary evidence having been received and the matter having been argued and submitted for decision and good cause appearing therefore, it is hereby ordered, adjudged and decreed that:

PROCEDURAL MOTION

1. Petitioner's Motion to amend her pleadings for a fourth time by the addition of an Amended Second

Petition for Writ of Mandate or alternatively for Injunctive Relief to Conform to Proof is denied.

FINDINGS OF FACT

1. Providence Hospital of Oakland, Herrick Hospital and Alta Bates Hospital are separate and distinct corporate entities currently doing business in the County of Alameda as health care providers. John C. Weaver, Jr., M.D., is an individual duly licensed to practice medicine in the State of California and a fully qualified and experienced specialist in the field of nephrology. BMA of Oakland, Inc. is a separate corporation and medical care provider which operates and has operated an out-patient clinic housed in facilities of Providence Hospital.

2. Petitioner, Brenda Marie Payton, is an individual with a chronic kidney ailment requiring her to have periodic dialysis treatment. For approximately 5 years as a patient of Dr. Weaver and an out-patient of BMA of Oakland, Inc. she has received hemodialysis treatment. She also during this time has on occasion received peritoneal dialysis. Both forms of dialysis treatment purge the body fluids of poisons and toxic substances harmful to good health and life.

3. On several occasions during the 5 years that he has attempted to provide her with medical care, Dr. John C. Weaver, Jr. has had to advise Petitioner that he could no longer act as he doctor owing to her failure to follow

medical instructions and her disruptive and harmful activities which constitute a danger to herself and to other patients. Shortly prior to the original filing of the petition in this matter, Dr. John C. Weaver, Jr., gave notice of his intent to withdraw from the physician-patient relationship. A final letter to Petitioner was sent by Dr. Weaver on March 3, 1980 notifying her that he would no longer treat her after April 5, 1980.

4. As a result of the first Court hearing on the matter herein it was stipulated by Petitioner, Dr. John C. Weaver, Jr., BMA of Oakland, Inc. and Providence Hospital as follows:

> 1) The patient will keep all appointments at their schedule time;
> 2) The patient will refrain from all use of alcohol;
> 3) The patient will refrain from all use of drugs, except those prescribed by her physician;
> 4) The patient will maintain prescribed dietary habits; and
> 5) The patient will in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen.
>
> The obligations of this order are interdependent so that the obligation to render medical care is dependent upon the patient's compliance with the conditions of this order.
>
> During this interim period of sixty (60) days, the patient shall seek to make other arrangements for her medical care and Respondent Weaver shall cooperation (sic) in this process.

> Providence Hospital will accept Petitioner as a patient provided she is formally admitted by and under the care of a properly qualified member in good standing of its hospital staff and cooperates in good faith as a patient, giving due and reasonable consideration to the needs and rights of other patients.

This Stipulation was entered into following negotiations amongst attorneys for the parties affected. The Stipulation was made on or about May 4, 1979 and thereafter incorporated as a part of the Court's Order.

4*. Thereafter on or about July 10, 1979, Petitioner and Dr. John C. Weaver, Jr. and BMA of Oakland, Inc. and Providence Hospital reaffirmed the original Stipulation and added a sixth condition as follows:

> 6) The patient will enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

This affirmation and additional condition was entered into following negotiations amongst attorneys for the parties affected. On or about July 10, 1979 and thereafter incorporated as a part of a Court Order.

6. On numerous occasions from May 4, 1979 up to the date hearing on this matter Petitioner failed and

---

* Numbered as in original.

neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.

7. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbituates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.

*

9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.

10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.

11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.

---

* Numbered as in original; no material deleted.

12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part.

13. Petitioner's failure to meet the above conditions has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.

14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of Petitioner under the facts shown herein.

15. Petitioner has not been discriminated against on the basis of race or lifestyle or at all. Petitioner has not been refused dialysis by any named Respondent on the basis of any activity on the part of Respondent Dr. Weaver, Jr. or Respondent BMA of Oakland.

16. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Alta Bates Hospital. Alta Bates Hospital denied Petitioner's application for admissions to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Alta Bates Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Alta Bates Hospital's denial thereof, Petitioner has had no further contacts with Alta Bates Hospital and has never received hemodialysis treatments at Alta Bates Hospital.

17. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Herrick Hospital. Herrick Hospital denied Petitioner's application for admission to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Herrick Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Herrick Hospital's denial thereof, Petitioner has had no further contacts with Herrick Hospital and has never received hemodialysis treatments at Herrick Hospital.

18. A patient, like Petitioner, with end stage renal disease, will not become a medical emergency if that

person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.

19. Regular out-patient dialysis treatment of chronic kidney patients requires expertise and equipment not normally found in emergency rooms.

20. Petitioner suffers from end stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health and Safety Code §1317 or otherwise.

21. Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care.

22. It is neither reasonable nor necessary to require any of the defendants to provide Petitioner with hemodialysis on a regular out-patient or in-patient basis while Petitioner exercises complete freedom to indulge in the use of dangerous drugs, alcohol and the other excesses. (Although apparently without any personal control).

CONCLUSIONS OF LAW

1. Petitioner at this stage is not entitled to amend her pleadings to conform to proof.

2. Petitioner by frequent violations of the conditions of stipulations and orders herein is estopped to claim any further relief under the pleadings. By themselves said stipulations and orders do not, however, constitute a final determination and adjudication of the rights, duties and responsibilities of the parties. The findings of facts and conclusions of law herein constitute a final determination and adjudication of the rights, duties, and responsibilities of the parties.

3. Petitioner has no absolute right to dialysis treatment under the Hill-Burton Act (41 USC §291 et seq.) or any of the administrative regulations thereunder from any Respondent. Under said Act and regulations, the hospitals and BMA of Oakland are free to determine eligibility for services, insofar as treatment is reasonably refused and due process has been afforded and a reasonable volume of services is afforded to indigents. The Court finds no violation of either the Hill-Burton Act or the Civil Rights Act (42 USC §2000d et seq.) herein.

4. Petitioner has not been discriminated against on the basis of race, lifestyle or at all.

5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, Petitioner has no legal

right to compel medical service from any of the Respondents for chronic or regular care of her kidney problems through dialysis.

6. Should Petitioner present herself at any emergency department of any of the Respondent health care providers claiming a need to emergency care, a determination shall be made at that time by qualified physicians to see whether her condition constitutes an emergency and she is therefore entitled to medical services within the terms of §1317 of the Health and Safety Code.

7. There is no present duty on the part of any Respondent requiring any one of them to provide Petitioner with regular out-patient dialysis treatment.

8. Dr. John C. Weaver, Jr. has given sufficient notice to Petitioner and has discharged all obligations imposed by the patient-physician relationship with Petitioner.

9. Respondent John C. Weaver, Jr., M.D. is discharged from any further obligation to provide medical care to Petitioner unless he shall voluntarily accept such obligation in the future.

10. Respondent BMA of Oakland, Inc. is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

11. Respondent Providence Hospital is discharged from any further obligation to provide medical care to

Petitioner unless it shall voluntarily accept such obligation in the future.

12. None of the Respondent hospitals is required to provide to Petitioner as part of its emergency treatment hemodialysis on a regular out-patient basis.

13. Petitioner shall take nothing by reason of her "Petition for Writ of Mandate", "Amended Petition for Writ of Mandate", "Second Petition for Writ of Mandate", or any other pleading herein. Petitioner's Request for Mandatory Injunction is denied.

14. Neither Alta Bates Hospital nor Herrick Hospital have violated the Hill-Burton Act (42 USC §291, et seq.), the Civil Rights Act (42 USC §2000d, et seq.), or Health and Safety Code §1317 in denying Petitioner regular out-patient hemodialysis treatments.

DATED: June 19, 1980

_____

Judge of the Superior Court

APPENDIX F

42 U.S.C. Section 1994.

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-2094

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

v.

BRENDA MARIE PAYTON,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

WARREN B. WILSON
Law Offices of Wilson & Casey
653-11th Street
Oakland, California 94607

Counsel for Respondent

July 9, 1981

QUESTIONS PRESENTED FOR REVIEW

Can a state court order a private physician and dialysis unit, against their will, to render medical services to an individual patient, where:

(1) the patient has terminal kidney disease which requires regular dialysis treatment for her life survival,

(2) no other local health care providers who have these specialized dialysis facilities will accept this patient and provide her with regular medical care,

(3) such order is made in order to preserve the status quo, pending an appeal which will have important and broad effects in the medical and legal fields, in that it raises basic issues regarding the rights and responsibilities of those physicians and health care providers who have control over life-sustaining medical equipment, in relation to those patients who are dependent upon these machines for their life survival, and

(4) the physician and health care providers are fully compensated by the government for all services rendered to the patient under this temporary order?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-2094

JOHN C. WEAVER, JR., M.D. and

BMA OF OAKLAND, INC.,

Petitioners,

v.

BRENDA MARIE PAYTON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent BRENDA MARIE PAYTON respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Order of the California Supreme Court entered in this proceeding March 11, 1981.

OPINIONS BELOW

On June 30,1980, a trial Judge of the Alameda County Superior Court ordered that Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC. provide dialysis treatment

to Respondent pending her appeal of his decision of that same date, wherein he ordered that Respondent could not compel Petitioners to provide her with regular dialysis treatment. Notices of Appeal were promptly filed by both Petitioners and Respondent. With the filing of their Appellants' Opening brief, Petitioners filed a Petition for Writ of Supersedeas to relieve them of obligations to treat the Respondent under this interim Order. Although Respondent filed her opening brief on January 29, 1981, on February 20, 1981, the Court of Appeal, District One, Division One, granted the Petition for Supersedeas. Recognizing the gravity of the consequences of the Appellate Court's Order, on February 24, 1981, the California Supreme Court stayed execution of the Order of the Court of Appeals granting supersedeas, pending their consideration of Respondent's Petition for Hearing. On March 11, 1981, the Supreme Court made the Order which is the subject of the present Petition for Writ of Certiorari, wherein they granted the Petition for Hearing, re-transferred the cause to the Court of Appeal, First District, Division One, for the determination of the pending Appeal and reinstated the Order of the trial Court that Petitioners treat Respondent pending her appeal.

STATEMENT OF THE CASE

Respondent is a 34 year old black woman who has had end-stage renal disease for the past ten years. She has no functioning kidneys, and is dependent upon treatment on an artificial kidney machine on a regular basis to cleanse her system of excess fluids and toxic

waste build-up. Without dialysis treatment on a regular basis of three treatments per week, fluids will build up in her system and cause a condition called pulmonary edema, by which she would literally suffocate from lack of oxygen. Additionally, toxic wastes accumulate in her system, which could result in seizures or cardiac arrest. Unless Respondent receives regular dialysis treatments, she will die within a period of a few days.

Respondent lives alone in a low-income housing project in West Oakland, and her sole source of income is a monthly Social Security Insurance check of $416.00. She has four children, ages 18, 14 and 7, all of whom live in foster homes. Her twin daughters were born seven years ago, while she had a transplanted kidney. Although the children were healthy, her transplant went into rejection a year after their birth, requiring her to resume regular dialysis treatment. Because of her physical condition, she was unable to properly care for the twins, and they were removed from her care and placed in a foster home when they were 2 years old. Although the rest of her family lives locally, she receives very little assistance and support from them. She prepares her own meals and maintains her own home. She is dependent upon public transportation to get to her dialysis appointments. She acknowledges that she has emotional problems, many of which she believes are related to anxiety and stress of her physical condition. She has a long history of drug abuse.

Respondent has been receiving medical treatment

under the care of Petitioner, JOHN C. WEAVER, for six and one half years at the outpatient dialysis facility of Petitioner, BMA OF OAKLAND, INC., and inpatient treatment at PROVIDENCE HOSPITAL in Oakland. BMA OF OAKLAND, INC. is a profit-making California corporation which operates an outpatient dialysis unit which is on the premises of PROVIDENCE HOSPITAL. It is a subsidiary of National Medical Care, Inc., a publicly owned corporation. At the time of the trial, Petitioner WEAVER was associate medical director of BMA OF OAKLAND, INC. and had an investment interest in the corporation.

In November, 1978, on April 23, 1979 and again on March 5, 1980, Petitioner WEAVER notified Respondent that he was terminating his relationship with her and he would no longer treat her, because of her non-compliant, non-cooperative and anti-social behavior.

Although the usual manner in which a dialysis patient transfers from one facility is by referral from their physician, when Dr. WEAVER terminated Ms. PAYTON as his patient, he made no affirmative efforts whatsoever to assist her in getting other dialysis treatment. At the trial, he testified that, in terminating her, he knew that no other dialysis facility would accept her as a patient.

When she was notified by Dr. WEAVER that he was terminating her as his patient, Respondent, on her own initiative, contacted the other two dialysis facilities in the area which are accessible to her by public transportation, ALTA BATES HOSPITAL and HERRICK HOSPITAL.

After reviewing medical records Dr. WEAVER had given to Ms. PAYTON, and consulting with Dr. WEAVER and staff at BMA OF OAKLAND, INC., both facilities advised her that they could not accept her as a patient, because it would not be in her best interest or that of their other patients.

Because no other dialysis facility would accept her as a patient, and she has no other resource for getting treatment, on April 30, 1979, Respondent filed her Petition for Writ of Mandate to compel Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC. to provide her with life-sustaining treatment. Also named as Respondents in this action were PROVIDENCE HOSPITAL, ALTA BATES HOSPITAL and HERRICK HOSPITAL. On May 4, 1979, Petitioners JOHN C. WEAVER, BMA OF OAKLAND, INC. and also PROVIDENCE HOSPITAL entered into a Stipulation with Respondent wherein they agreed to provide her with dialysis under certain conditions. The terms of this Stipulation are set forth on pages 9 and 10 of the Petition for Writ of Certiorari. On March 5, 1980, Petitioner WEAVER advised Respondent that he was terminating his relationship with her, because of her failures to uphold her terms of the Stipulation.

On April 9, 1980, a hearing on Respondent's Petition for Writ of Mandate was commenced, and testimony was heard in the matter on April 10th, 11th and 17th. At the beginning of the trial, the trial Judge ordered that Petitioners treat Respondent pending his decision. On June 30, 1980, the trial Judge signed his Order Denying Peremptory Writ of Mandate and Injunction.

Because of the critical nature of Respondent's medical illness and the fact that her death would result in a very short time without continuing regular dialysis treatment, and also that no other health care facility would accept Respondent as a patient, on June 23, 1980, Respondent made a Motion to the trial court for a Stay of Execution of Judgment and Continuation of Temporary Order during her appeal of the above-referenced Order and Judgment. Said Motion was granted on June 30, 1980.

Since that time, Respondent has been receiving regular dialysis treatment under the medical supervision of Petitioner WEAVER. She initially received outpatient treatment at the facilities of Petitioner BMA OF OAKLAND, INC. As he indicated in his declaration dated January 13, 1981 and filed with the Appellate Court January 20, 1981, Petitioner WEAVER advised Respondent on December 18, 1980 that he would only be providing Respondent with dialysis on an inpatient basis, because, in his opinion, she was such a menace to her own health and safety. Since that time, she has been receiving regular dialysis treatment at PROVIDENCE HOSPITAL. This requires that she be admitted to the hospital before getting treatment. Because Petitioner WEAVER will not discharge her from the hospital, she is forced to leave the hospital against medical advice when the regular treatment is finished. In spite of this rather irregular procedure, Respondent's health continues in a relatively good condition, and she has continued to maintain her home and contact with her children on a regular basis.

Since Petitioner WEAVER first indicated his

intention to terminate his relationship with her, Respondent, through the vigorous assistance of her counsel, has been trying to arrange for other medical care for herself. Because of her notoriety in the dialysis community, no other dialysis provider will accept her as a patient, and there is in effect a "conspiracy of silence" on the part of other local dialysis facilities, which has resulted in Respondent's being foreclosed from getting dialysis treatment anywhere else. Using the assistance and influence of two local physicians who specialize in treatment of drug addicts, Respondent attempted to gain admission to drug treatment programs, but was consistently refused because of her medical problems. In the hope of receiving treatment through the resources of a state mental health facility, Respondent sought admission as an inpatient, but was denied because this facility accepts only patients with acute psychiatric disorders. Additionally, this institution advised Respondent that they do not have dialysis facilities on their premises, and have no power to compel private health care facilities to treat their patients.

In considering this Petition for Writ of Certiorari, it is of great significance to note that payment for services rendered has never been an issue in this case. Because of the catastrophic nature of end-stage renal disease and tremendous costs of its treatment, the federal government pays for 80% of all outpatient dialysis treatments, as well as physicians' fees and other hospitalization costs related to this disease

through Medicare under the Social Security Program. Costs not covered by Medicare are picked up by private insurance or state-funded health care programs. In 1979, the federal government expended $850.5 million on this program. As of September 30,1978, there were 60,923 beneficiaries of the program, nation-wide. Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC., as well as PROVIDENCE HOSPITAL, have been fully compensated for all medical treatment they have given to Respondent, and will continue to receive full payment from the government throughout the course of this appeal and existence of this temporary order.

The appeal has been in process for over one year. Respondent's appellate brief has been filed, and response briefs have been filed on behalf of four of the five Respondents. Recognizing the importance and broad ramifications of issues raised by this appeal, two professional organizations have filed applications to file briefs as amicus curiae on behalf of Petitioner WEAVER. Said applications have been granted, and these briefs will be filed within the next month.

REASONS FOR DENYING THE WRIT

I. The Order which is the subject of this Petition is collateral to a substantive appeal which raises issues of national public concern and has ramifications far broader than to the parties involved in this case.

It is a well accepted legal principle that courts have the inherent power to make temporary orders to preserve the status quo pending appeal. Terminal

R. Assoc. v. United States, 266 US 17, 69 LED 150, 45 Sup. Ct. 5 (1924), State v. Board of Education, 19 Wash 8, 52 P 317 (1898), Blair v. Blair, 199 Or 273, 247 P.2d 883 (1952).

In People ex Rel S. F. B. C. D. C. v. Emeryville, 69 Cal 2d 533, 72 Cal. Rptr. 790, 446 P. 2d 790 (1968), the California Supreme Court recognized the need for lower courts, on both the trial and appellate level, to exercise this power to maintain the status quo where difficult questions of law are involved, and the fruits of a reversal would be irrevocably lost without the court's intervention. In that case, the Supreme Court cautioned that this power should be used sparingly and in the exceptional case.

Other cases have recognized that, in certain circumstances, the trial court has the power to make temporary orders to preserve the status quo. Merchants Warehouse Co. v. United States, 283 US 501, 75 L Ed 1227, 51 S. Ct. 505 (1930), Palmer v. Harris, 23 Oakla. 500, 101 P 852 (1909).

The California Supreme Court affirmed the power of the trial court to continue in force a preliminary injunction so as to maintain the status quo of the subject matter of the litigation pending appeal, notwithstanding the fact that the right to the injunction was denied by the judgment itself.

> "Common fairness and a sense of justice readily suggests that while Plaintiffs were in good faith prosecuting their appeals, they should be in some way protected in having the subject-matter of the litigation preserved intact until the appellate court could settle the controversy".
> City of Pasadena v. Superior Court, 157 Cal 781, 795 (1910)

> "A trial court may be reasonably certain that the conclusion it has reached denying an injunction is correct, while at the same time, the matter may not be entirely free from doubt in its mind. Under these circumstances, and where the losing party is endeavoring to avail himself of his right of appeal and is prosecuting that right diligently, the trial court ought to have the power and the discretion to exercies it, so as to protect the subject matter of litigation from destruction pending the final determination of that right, and in order that, if it be ultimately decided that the judgment appealed from was erronecus, his property might be saved to him".
> City of Pasadena, supra, 157 Cal at p. 796.

The theory behind a court's power to issue interim orders pending appeals is so that the status quo can be maintained, and that property which is the subject matter of the appeal will not be destroyed during the process of appeal so that the appeal would be, in effect,moot. In this case, we are not dealing with property, but we are dealing with a human life. The trial Judge explicitly recognized the need for the interim order when he stated:

> "It is to preserve something that may not be available if the Court of Appeals decides that the trial Judge was wrong, and in this case, we are not talking about property, whether it be personal property, we are not talking about real property, we are talking about a human life, a person, if she does not receive regular outpatient dialysis, cannot continue to function as a human being. She will die."
> (RT 6/23/80 22:25-23:3)

The rationale underlying the right to an interim order to maintain the status quo pending appeal in the usual case are not only present in this case, but are urgent and compelling, and common decency and human compassion mandate that the Court exercise its equitable power to provide Respondent with medical treatment, while she diligently and in good faith prosecutes her appeal

which involves fundamental questions of life and death, which have ramifications which are much broader than to Petitioner's case alone. Failure to grant the interim order for medical treatment pending her appeal will render the issue of the appeal moot, and will result in destruction of property in the most graphic sense of that term. It is without dispute that Respondent will die in a brief period of a few days, if she does not receive the medical treatment which the Judge ordered in the post-judgment order, which is the subject of this Petition for Writ of Certiorari.

The trial Court made the following finding:

> "21. (Ms. Payton) has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. (Ms. Payton) therefore is not without means to arrange for her own care." (Appendix E to Petition for Writ of Certiorari, p. 8)

This finding indicates that Respondent has the freedom to enter a drug treatment program to help her deal with her drug problems. But this finding in no way deals with Respondent's problem in getting the dialysis treatment she needs.

Throughout the course of these proceedings, Petitioners have consistently maintained that Respondent has voluntary, alternative means available to her, either by entering a drug treatment program, or by voluntarily petitioning for a conservatorship. They have never addressed the question, however, of what influence or power would a drug program director or a conservator have to compel a physician or health care facility to

treat, should they decide they would not treat, the patient? The fact remains that all dialysis treatment facilities in this area are under the control of private physicians and facilities. As Respondent's experience has shown, where one physician terminates his relationship with a particular patient and thereby cuts off her access to life-sustaining medical treatment, and his colleagues acquiesce by their silence and refusal to become involved with this patient, that patient will effectively be cut off from medical treatment, and will predictably die within a brief time. A personal or legal representative would be in no better position than Respondent herself now is to arrange for her own medical treatment, until the issues raised by her appeal have been determined.

In the substantive appeal we are dealing with, very important and novel issues have arisen in the light of revolutionary advances in the field of medical technology. There are few legal and procedural guidelines to deal with a situation such as the present one. The outcome of this substantive appeal will affect physicians, health care providers, administrators and patients who are involved in the End-Stage Renal Disease program. Recognizing the importance of this, two professional groups are participating in the appeal process on behalf of Petitioner WEAVER.

The substantive appeal has now been in process for over a year, and the Order that is now the subject of this Petition for Writ of Certiorari is a temporary order incident to that appeal. Respondent has no other means to arrange for her own dialysis treatment, and

unless this temporary Order continues, she will die before the appellate process is completed.

II. Petitioner WEAVER's claim that he is being forced into involuntary servitude must be considered within the total context of this case, and the burden imposed upon Petitioners by the temporary Order must be weighed against the gravity of the consequences to Respondent, if this temporary Order is terminated before the appeal is heard.

As is indicated above, the Order which is the subject of this Petition for Writ of Certiorari is collateral to a substantive appeal which has been in process for over a year, and which is dealing with important legal issues involving the rights and responsibilities of those persons who have control over life-support machines to those patients dependent upon these for their survival. This Petition for Writ of Certiorari must be viewed in relationship to the substantive appeal and in addressing Petitioner WEAVER's claim that he is being forced into "involuntary servitude", the actual extent of the burden imposed upon by this Order must be weighed against the fact that Respondent will die before the appeal can be heard, if the Writ of Certiorari is granted.

> "A mandatory injunction, it is said, should only be granted under compelling circumstances." 42 Am Jur 2d 751, Inj. §20.
>
> "The ordinary function of an injunction pendente lite is to preserve the status quo, and it is to be issued only on a showing that there would otherwise be danger of irreparable injury." United States v. Adler's Creamery, Inc., CA 2d NY 107 72d 987, (1939), Community Natural Gas Co. v. City of Cisco, 5 Cir., 65 F2d 320 (1933).

The circumstances which gave rise to this temporary Order were extraordinarily compelling, and the trial Judge, after hearing four days of testimony and considering all the evidence before him, recognized that no other dialysis provider would accept Respondent as a patient and that, without the regular dialysis treatment, she would die before the appeal process was completed. In this case, we are talking about irreparable injury in the most literal sense of that word, i.e., death of a human being. This was the reason behind the trial Judge's issuance of this order, and the Supreme Court acted with human decency, compassion and fairness in overturning the decision of the California Court of Appeals which terminated this Order.

> "The awarding or withholding of such extraordinary relief is a matter of sound judicial discretion in the exercise of which the Court must balance the conveniences of the parties and possible injuries to them according as they may be affected thereby." Eutectic Welding Alloys Corp. v. Zeisel, 117RD 78, 79 (1950), Yakers v. United States, 321, U.S. 414, 440, 64 S. Ct. 660, 88 L.Ed 834, (1944), Rice and Adams Corp. v. Lathrop, 278 U.S. 509, 514, 49 S. Ct. 220, 73 L.Ed. 480 (1929).

> "While it is true that a mandatory or affirmative injunction should be issued with caution, and is ordinarily restricted to cases where adequate redress at law is not afforded, or where the injury is not compensable in damages, and in weighing the propriety of issuing it, a court should consider the relative convenience and inconvenience which will result to the parties from granting or refusing this form of injunctive relief." Maryland Trust Co. v. Tulip Realty of Maryland, 153 A2d 275, 284, 220 Md. 339 (1959), Baltimore & Philadelphia Steamboat Co. v. Ministers & Trustees of Stow Methodist Protestant Church, 130 A 46, 149 Md. 163 (1925).

Petitioners contend that the effect of this Order

is that Petitioner WEAVER has to be on call at all times for Respondent in order to comply with this Order. However, the experience of the past twelve months during which this Order has been in effect appears to indicate that Petitioner WEAVER has not been so burdened by this Order as to restrict his freedom of movement. As he indicated in documents previously filed with the Appellate Court, he was out of the country on a vacation for two and one half months last fall. Recently, staff at PROVIDENCE HOSPITAL advised Respondent that Petitioner WEAVER was out of the country on a month's vacation. During both of these prolonged periods of his absence and at other times intermittently when it is not convenient for him to be present, he has been able to arrange for other staff members to oversee Respondent's medical treatment, and she has received her regular dialysis treatment without any problem or incident.

Petitioners contend that this Order forces them to work under conditions which are intolerable to them, and dangerous to the safety of other patients. However, for over six months, Petitioner WEAVER has arranged to have Respondent treated on an inpatient basis at PROVIDENCE HOSPITAL where she is completely removed from the facilities, staff and patients of Petitioner BMA OF OAKLAND, INC., and given specialized treatment which he feels she needs. The effect of this arrangement on Respondent is that she virtually has to submit to incarceration in the hospital in order to get the medical treatment she needs, so that she will survive until the appeal is completed.

It is of great interest to note that throughout the entire course of these proceedings, the issue of payment for services rendered has never been raised. At all times, Petitioners and all other health care providers who have provided medical services to Respondent have been fully compensated for these services by the government, and will continue to receive full payment for these services so long as this temporary order is in existence.

Petitioners contend that the State could not compel other types of workers, such as bricklayers, milkmen or textile workers, to perform personal services for a given employer, and, therefore, the State should not compel Petitioner WEAVER to treat one particular patient. The distinctions between these occupations and Petitioner WEAVER's profession are almost too obvious to require comment. Should a bricklayer fail to perform his/her job, people might be inconvenienced, but certainly no one would die because of it. On the other hand, if a physician fails to perform his duties by not treating a person who is in danger of serious bodily harm or death, the consequences of that failure to perform are predictable and possibly deadly. Members of the medical profession supposedly take an oath whereby they commit themselves to the preservation of human life, not the destruction of it. One might reasonably assume that certain ethical oblications would flow from such an oath, which would result in that profession's feeling a higher sense of responsibility to the sick and disabled members of our society. The

Order of the California Supreme Court does not purport to dictate the terms and conditions of Petitioner WEAVER's relationship with any of his other patients or colleagues, but only imposes responsibilities as to one individual patient.

Petitioner WEAVER practices medicine under license of the State, and he specializes in a field of medicine which is almost totally supported by the government, yet he feels that he is so far beyond the reaches of legitimate legal processes that he should not have to comply with reasonable court orders. In light of the gravity of the consequences to Respondent by her not getting regular dialysis treatment, and also the great disparity between Petitioner and Respondent in their access to resources and control over their own circumstances, Petitioner WEAVER's assertion that the California Supreme Court has "created a small island of slavery" by ordering him to treat Respondent pending outcome of her appeal is unreasonable, ludicrous and completely without basis in fact or law.

CONCLUSION

The Order of the California Supreme Court that Petitioner provide regular dialysis treatment to Respondent pending her appeal does not purport to impose a permanent physician-patient relationship on Petitioner WEAVER, but is an effort to maintain the status quo pending an appeal which raises novel and fundamental issues in the light of life-sustaining medical technology, that have not been addressed before in either the legal or medical communities. The results

of this appeal will have significant impact not only on Petitioner WEAVER, but also on his colleagues who practice this very specialized and developing area of medicine. The appeal has been in process for over a year. All briefs in connection with it should be filed within the next six weeks and the issues determined within a reasonable time.

Even though Petitioner may find Respondent, her background and lifestyle offensive, the facts remain that no one else will provide dialysis treatment to her, and that she will die unless she gets this treatment. This Order of the California Supreme Court is not so burdensome on Petitioner WEAVER that he has not been able to take extended vacations while fulfilling his responsibilities under it. He has also been able to make alternative arrangements to treat Respondent in a specialized setting which, in his judgment, are necessary. Additionally, Petitioner continues to be well compensated for all his medical services rendered to Respondent.

The California Supreme Court acted reasonably and compassionately in making its temporary Order. Respondent respectfully requests that this Court employ this same logic and compassion, and allow this temporary Order to remain in effect until the substantive appeal can be decided.

Dated: July 9, 1981

Respectfully submitted,

WARREN B. WILSON
Attorney for Respondent

IN THE SUPREME COURT

OF THE

UNITED STATES

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

Proof of Service - Certificate by Bar Member

I, WARREN B. WILSON, attorney for BRENDA MARIE PAYTON, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 9th day of July, 1981, I caused to be served copies of the foregoing Respondent's Brief in Opposition to the Petition for a Writ of Certiorari, Motion for Leave to Proceed in Forma Pauperis, and Affidavit in support of this Motion on the several parties thereto, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as follows:

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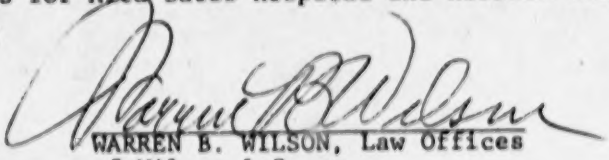

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JUL 13 1981
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-2094

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC., Petitioners

v.

BRENDA MARIE PAYTON, Respondent

AFFIDAVIT

I, BRENDA MARIE PAYTON, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to pay costs or fees: 1. I am the Respondent in the above-entitled case. 2. Because of my poverty, I am unable to pay the fees and costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. 5. The nature of the cause is briefly stated as follows:

I suffer from end-stage renal disease which is a terminal illness requiring that I have regular dialysis treatments for my survival. Because my physician, Petitioner JOHN C. WEAVER, has refused to treat me, and it was necessary for me to file a Petition for Writ of Mandate to compel Petitioners and/or other health care providers, also named as Respondents in said

Petition,to provide me with dialysis treatment.

My Petition for Writ of Mandate was denied at the trial level, and I, through my counsel, have been prosecuting an appeal of this decision for over a year. The appeal raises important issues regarding the rights and responsibilities of those persons and facilities that have control over life-support machines to those persons who are dependent upon these machines for their survival. The issues raised by this appeal will have ramifications far broader than to just my case alone.

At the trial level, the Judge ordered that Petition WEAVER treat me pending my appeal. The California Court of Appeal, District One, Division One, granted supersedeas on behalf of Petitioner WEAVER, which, in effect, terminated this temporary order. The California Supreme Court ordered a reversal of this order, and reinstated this temporary order for my treatment. The Petitioners are now asking this Court to overturn the order of the California Supreme Court. If this Writ is granted, and the temporary order is dissolved, I will not be able to get dialysis treatment, and will die before my appeal of the substantive issues involved in this case is finished.

My only source of income is a monthly Social Security insurance check of $416.00, and I have no other assets. Throughout the course of these legal proceedings, my attorneys have represented me on a pro bono basis. To date, they have advanced costs

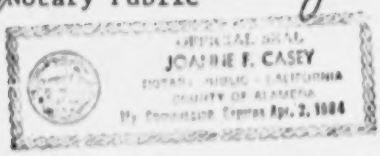
related to my appeal in excess of $1,400.00. I have no funds with which to repay these costs or to pay for any other costs which might be connected with this Petition for Writ of Certiorari.

I declare under penalty of perjury that the foregoing is true and correct.

Brenda Marie Payton
BRENDA MARIE PAYTON

Duly witnessed and sworn to
before me, a Notary Public,
this 9th day of July, 1981.

Joanne F. Casey
Notary Public



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v.

BRENDA MARIE PAYTON, Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, BRENDA MARIE PAYTON, asks leave to file the attached Response to Petition for Writ of Certiorari to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis* pursuant to Rule 53.

The Respondent's affidavit in support of this motion is attached hereto.

WARREN B. WILSON, Law Offices
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Oakland, California 94607

Office-Supreme Court, U.S.
FILED
AUG 3 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2094

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

VS.

BRENDA MARIE PAYTON,
Respondent.

REPLY BRIEF OF PETITIONERS

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Respondent.

REPLY BRIEF OF PETITIONERS

I. CERTIORARI SHOULD BE GRANTED IN THIS CASE BECAUSE, CONSTITUTIONALLY, THE CALIFORNIA COURT FAILED TO ADOPT THE LEAST DRASTIC MEANS OF ACHIEVING ITS OBJECTIVE, BUT INSTEAD ADOPTED THE MOST DRASTIC MEANS—THE CONSCRIPTION OF PRIVATE PERSONS INTO THE INVOLUNTARY PERSONAL SERVICE OF ANOTHER

Respondent's brief does not offer a single word to refute or contest petitioners' contention that the

California Supreme Court has bound Dr. John C. Weaver, Jr. and BMA of Oakland, Inc. into involuntary servitude in violation of the Thirteenth Amendment. Instead, without citing any supporting constitutional law whatsoever, respondent urges this Court to balance her interests against Dr. Weaver's. [RB, p. 13.]

Balancing, however, is not the proper test to be applied where the result is an infringement of constitutionally protected rights. As stated in *Kusper v. Pontikes*, 414 U.S. 51, 59, 94 S.Ct. 303, 38 L.Ed. 2d 260 (1973):

> [E]ven when pursuing a legitimate interest, a state may not choose means that unnecessarily restrict constitutionally protected liberty. . . . If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a . . . scheme that broadly stifles the exercise of fundamental personal liberties.

Thus, if the State of California has an interest in arranging for Ms. Payton's dialysis pending her appeal,[1] then the State must adopt the *least drastic means* of doing so.

At the time it made its order, however, the California Supreme Court did not explore any less drastic alter-

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[1] The only State interest expressed in the California order is the preservation of the court's jurisdiction.

natives. For example, the California court had before it a declaration showing that an inpatient drug therapy program in nearby Marin County had agreed voluntarily to admit Ms. Payton for treatment of her drug abuse; as a part of that inpatient care, the medical director of the drug program had specifically arranged for Ms. Payton's dialysis.[2] (See Appendix A, *infra*.)

In addition to the Marin alternative, respondent had, and continues to have, the option of voluntarily petitioning the State of California for a conservatorship of the person. (Cal. Prob. Code §§ 1800-2752.) Under California law, such a petition for conservatorship is the proper means for arranging medical care when a person is unable to do so him or herself. (Cal. Welf. & Inst. Code §§ 5357, 5358, 60 Ops. Atty. Gen. 375, 381 (1977).)

While it is not Dr. Weaver's or BMA's burden to demonstrate how a conservator of the person would have the power or influence to arrange for Ms. Payton's care [RB, p. 11-12], it is obvious that such a conservator would have authority to deal with *all* of Ms. Payton's problems—especially her personality disorders and drug addiction. For example, a conservator could follow through with placing Ms. Payton in a drug program, such as the Marin

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[2] Unfortunately, after the California Supreme Court issued its order, Ms. Payton had no incentive to pursue this drug therapy program and so abandoned it.

inpatient therapy program mentioned above. Dr. Weaver, on the other hand, has no such power to secure Ms. Payton's cooperation in her care. It is submitted, therefore, that a conservatorship of the person would be in the best overall interest of Ms. Payton and would also be the least drastic means of achieving the State's objective of preserving the court's jurisdiction while Ms. Payton pursues her appeal from the judgment against her.[3]

As is evident from the availability of these alternatives, this is not a case which pits one person's life against another's freedom. Nor is this a case (as respondent tries to suggest) of a poor, black woman being abused by a physician who is allegedly not fulfilling his obligations under the Hippocratic Oath. [RB, p. 16.] Such irresponsible personal attacks on this physician are wholly inappropriate and completely unsupported by the facts.[4] To the contrary, the trial court observed that Dr.

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[3] Contrary to respondent's brief at page seven, respondent has never filed a single document in court to gain admission to a mental hospital. When implored by both the trial and appellate justices to seek a voluntary conservatorship, her response was essentially that she did not wish to do so. Should petitioners lose their Thirteenth Amendment rights simply because respondent does not elect to exercise her voluntary alternatives?

[4] One of many examples of respondent's misrepresentations may be found at RB p. 15, where she alludes to Dr. Weaver's absence from the country "on a vacation for two and one half months last fall." Dr. Weaver spent that (continued)

John Weaver was:

> in fact sensitive to [Ms. Payton's] needs, that he has attempted to assist her to the best of his medical abilities, and that he continues to have concern for her as a person and has continued to serve her medical needs.

The trial judge concluded: "The man has the patience of Job."

II. RESPONDENT'S BRIEF DOES NOT DENY HER ABERRANT, DISRUPTIVE AND DANGEROUS BEHAVIOR

Respondent admits at page three of her brief, "that she has emotional problems, . . . [and] a long history of drug abuse." Neither respondent's brief nor the lower court's order addresses this overriding fact. Instead, Ms. Payton's brief tries to shift the responsibility for the consequences of her own behavior to others. The result is a string of contradictions in her brief. For example, at page four, she alleges that Dr. Weaver "made no affirmative efforts whatsoever to assist [Ms. Payton] in getting other dialysis treatment;" yet one page later, she describes such affirmative efforts, narrating his consultation with two other local dialysis units who concluded, as Dr. Weaver has, that they should not accept Ms. Payton as a patient because "it would not be in her best interest or

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"vacation" in Thailand treating Cambodian refugees.

that of their other patients." [RB, p. 5.] Similarly, at page seven of her brief, she acknowledges her own "notoriety" in the dialysis community, which obviously is derived from her own behavior, over which Dr. Weaver has no control.

The inability of anyone—except a conservator—to supervise Ms. Payton's behavior makes the lower court's order totally unworkable.[5] The California courts simply failed to address the central and most crucial problem in this case: how to deal with the uncooperativeness of this patient.

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[5] The unworkability of this order is well illustrated by the present deteriorating treatment situation. What respondent characterizes as "virtually (having) to submit to incarceration" (RB, p. 16) is, in fact, Dr. Weaver's standing order that Ms. Payton remain for ongoing treatment as an inpatient in the hospital, where she will not have access to street drugs, will be fed a monitored and proper diet, and will be available for regularly scheduled dialysis. As in the past, however, she refuses to cooperate with the doctor's orders. She walks out of the hospital against medical advice and returns at her whim for treatment, expecting Dr. Weaver to be on call any time of the night or day to provide treatment whenever she wants it. During her absences, she continues to abuse drugs, indulge her dietary indiscretions, and procrastinate in seeking dialysis, all of which combine to complicate her care. She also continues to be as disruptive in the hospital as she was in the outpatient unit. Clearly, this arrangement cannot continue for the many years it will take to resolve her underlying appeal.

Indeed, this Petition for Certiorari stems from a totally illogical and contradictory set of orders by the trial court. On June 19, 1980, the trial court issued its judgment properly supported by findings of fact and conclusions of law, and found no legal or equitable basis for compelling petitioners to resume Ms. Payton's treatment. Yet on June 30, 1980, the trial court issued its post-judgment order compelling just such treatment pending appeal.

— How can a trial court find one day that Ms. Payton's behavior is so extreme and dangerous "as to trespass upon the rights of other patients," then the next day order that trespass to continue for the next several years?

— How can a trial court specifically find that no doctor-patient relationship existed, then turn and order the involuntary establishment of such a relationship, calling it a preservation of the "status quo"?

— Most importantly, how can the trial court make a specific finding in support of the judgment that Ms. Payton "is not without means to arrange for her own care," and then ignore those alternative means by ordering petitioners to provide respondent's care against their will?

The trial court's vague and general statement in its post-judgment order that Ms. Payton will die without dialysis is not sufficient to support the involuntary

servitude of petitioners. There must be an additional showing that less drastic means to secure that dialysis—short of conscripting a private citizen into involuntary servitude—have been considered and exhausted. No such showing was made and none can be presumed.[6] In short, the California courts have made a terrible mistake, which only this Court can undo.[7]

CONCLUSION

This case presents more than a distant struggle between a physician and the State of California over the forced treatment of a patient. This case poses a classic confrontation between the inalienable freedom of an individual and the power of the State.

As society becomes more and more accustomed to governmental intrusion and control in daily life, and as courts become more and more "creative" in fashioning solutions to problems before them, there is the constant temptation to let socially "good intentions" override the

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[6] Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Skinner v. Oklahoma, 316 U.S. 535, 544, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); Poe v. Ullman, 367 U.S. 497, 545, 81 S.Ct. 1752, 6 L.Ed 2d 989, Harlan, J. dissenting (1961).

[7] The California Supreme Court's order is contrary to the established state law governing patient-physician relationships. Agnew v. Parks, 172 Cal. App. 2d 756, 343 P.2d 118 (1959).

protections of the Constitution. In this case, this Court has the opportunity to send a clear message that no matter how well meaning a State may be, it may not expropriate a particular person's personal service and treat it as a State resource. An individual's labor, skills and abilities cannot be "nationalized" against his or her will. Although we are rapidly approaching 1984, the Orwellian spectre of an all-powerful State must not overtake our perceptions of fundamental freedoms, especially where less drastic means of achieving the State's objectives have not been exhausted.

This nation fought its bloodiest war over the right to be free from the personal service of another. Dr. Weaver is a human being who is not owned by Ms. Payton or by the State of California. Yet, so long as the California Supreme Court's order binds him, he is not free. Under penalty of being sent to jail, he must interrupt the treatment of his other patients, or put down his knife and fork at dinner, or arouse from a sound sleep, to respond to the call of a patient who refuses to abide by any reasonable schedule or regimen;[8] furthermore, in doing so,

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[8] Obviously, respondent is wrong in arguing that the payment of wages has anything to do with petitioners' rights in this case. (RB, pp. 7-8.) Nor should the Court be misled by respondent's vague argument that this petition is "collateral" to her appeal below. This petition challenges the post-judgment order, whereas her appeal is taken from the judgment against her. Likewise, she (continued)

he must violate the dictates of his best medical judgment by subjecting his other patients to this patient's aberrant and disruptive behavior.

What clearer case cries out for the relief of this Court than that of a man whose daily life, 24 hours a day, is subject to the ringing of a bell that forces him to go to work against his will? Every day that passes continues this State-mandated servitude. Because of the on-going severe violation of such a fundamental individual freedom, petitioners ask this Court to grant certiorari and summarily to reverse the California Supreme Court's order, with directions to the lower court to seek the least drastic means of achieving its objective.

DATED: July 29, 1981.

Respectfully submitted,

CHARLES F. BOND, II
Attorney for Petitioners

MARK I. SCHICKMAN
MARRS A. CRADDICK
Of Counsel

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represents that her appeal embodies issues of "national public concern" (RB, p. 8), but she never articulates them; indeed, her opening appellate brief below merely challenged three findings of fact, all of which are supported by overwhelming evidence. The only constitutional issue in this case is petitioners' right to be free from involuntary servitude.

APPENDIX A

OAKLAND MEDICAL GROUP
Incorporated
424 Twenty-Eight Street
Oakland, California 94609
(415) 452-4824

[Letterhead]

SUPPLEMENTAL DECLARATION OF
JOHN C. WEAVER, Jr., M.D.

John C. Weaver, Jr., M.D. declares under penalty of perjury the following:

In an effort to locate alternative hemodialysis treatment for Brenda Marie Payton, on February 27, 1981, I telephoned Mr. Gregg Bays, Tamalpais Growth Center, 812 D Street, San Rafael, California, and he advised me that Mrs. Payton could be accepted into the Rehabilitation Program of that organization. Included in the program she would be given rehabilitation treatment for her drug addiction, and also would receive all necessary hemodialysis treatment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of March, 1981, at Oakland, California.

_____
John C. Weaver, Jr., M.D.

Office-Supreme Court, U.S.
FILED
JUL 10 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-2094

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,

Petitioners,

vs.

BRENDA MARIE PAYTON,

Respondent.

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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INTEREST AND POSITION OF THE AMICUS CURIAE, THE RENAL PHYSICIANS ASSOCIATION[1]

The Renal Physicians Association as Amicus Curiae wishes to offer its cumulative experience and unique expertise in the treatment of dialysis patients to assist this Court in its review of the issue herein presented. The Association is a national organization comprised of nephrologists and transplant surgeons specializing in the prevention and treatment of kidney disease. It is the nephrologist who is the physician primarily responsible for the care of persons suffering from end-stage renal disease and in need of dialysis to maintain life.

[1]For purposes of this brief, the Statement of the Case contained in the Petitioner's Petition for Writ of Certiorari to the California Supreme Court is herein adopted and incorporated.

The constitutional issue which mandates this Court's immediate review is whether it is a violation of the Thirteenth Amendment for a physician, or any individual, to be compelled to provide personal services to another individual. The decision of the California Supreme Court compelling Dr. Weaver's services conflicts with the relevant decisions of this Court and the spirit and intent of the Thirteenth Amendment. Moreover, it is the position of the Renal Physicians Association that compelling any physician to provide services to a specific patient violates Canon VI of the medical profession's Canons of Ethics.

Canon VI of the American Medical Association's Canons of Ethics provides that no physician shall be compelled to treat any patient. This Canon serves to guarantee to the physician the right to determine the best interests of his patients as a whole in accordance with the principles of his profession. It is this medical discretion, so necessary to the integrity of the medical profession, which the California Supreme Court has attempted to eliminate.

Extremely disruptive and uncooperative patients are relatively atypical, but exist in sufficient number to pose a significant problem for the treating physician and other patients. When the disruptive patient creates an environment that is dangerous for the other patients and becomes medically unmanageable because of an intentional failure to follow the prescribed therapy, the physician must be free to decide to discontinue treating the patient, based on his or her best medical judgment and experience within the parameters of medical ethics. The ultimate victim of a court decision compelling a physician to continue providing services to any patient for whom care has been assumed is the patient. The chilling effect of such a decision would be to discourage physicians from accepting difficult patients in the first instance. The "Good Samaritan" physician, such as Dr. Weaver, will be a creature of the past, and patients like Ms. Payton with a history of disruptive behavior will never be given the opportunity to prove to the medical community that they can adhere to prescribed diets

and treatments and become acceptable patients. Resolution of this controversy in favor of Ms. Payton would ultimately be disadvantageous to those patients like her.

To fully comprehend the personal servitude which the California Supreme Court's decision has imposed, it is necessary to understand the nature of dialysis and the roles of the dialysis facility, the physician and the patient in this treatment mode. With the advantage of its members' experience with and insight into end-stage renal disease and the nature of dialysis, the Association would like to convey to this Court some sense of the necessity for cooperation between the physician and patient.

In order to function properly, the human body must maintain a delicate chemical balance. The kidneys play a major role in maintaining the body's chemical balance by ridding it of excess fluids and metabolic end products which if not removed will result in uremia, a disease which ultimately poisons the body and results in death.

End-stage renal disease (ESRD) occurs when an individual suffers an irreversible loss of kidney function. One mode of treatment for ESRD patients (and the one at issue in the instant case) is hemodialysis, in which a machine replaces the kidney, cleansing impurities from the body by passing the blood across a semipermeable membrane.[2] Dialysis is typically a four to six hour procedure which must be performed two to three times per week throughout an ESRD patient's lifetime. Failure of a patient to undergo treatment will result in a life-threatening accumulation of

[2]The End-Stage Renal Disease (ESRD) program, a model program of Medicare reimbursed health care, was created pursuant to the Social Security Amendments of 1972. The ESRD program began with approximately 11,000 beneficiaries on July 1, 1973, and had an average annual enrollment for 1979 of 56,000 patients. The patient population is projected by the Health Care Financing Administration to grow to 90,000 by 1995, though actual numbers have steadily exceeded previous estimates, and no one is certain where the equilibrium level is. R. Rettig, Implementing the ESRD Program of Medicare vii (R-2505-HCFA/HEW, September, 1980).

toxic waste in the body. For dialysis to be effective, an ESRD patient must follow a strict diet between treatments to prevent dangerous fluid accumulation in the body. Thus, effective dialysis therapy for ESRD patients is dependent upon the patient's cooperation and adherence to the prescribed medical treatment. An uncooperative patient pursues a path of self-destruction since a physician can be only as helpful as the patient permits.

A typical dialysis facility will operate many machines during each four to six hour treatment period or shift. Several patients are dialyzed during each shift. Frequently, the patient treatment area of the facility will be a single large room containing rows of reclining chairs with dialysis machines contiguous to the chairs. The machine and chair are referred to as a "station". Dialysis itself is a routine treatment; the patient arrives, is attached to the machine for four to six hours, and returns to his or her normal every-day activities until the next treatment.

During the dialysis session, physicians and staff persons go from station to station monitoring each patient's treatment. As in any health care facility, the number of patients during a shift exceeds the number of physicians and staff members available for routine monitoring. Thus, it is critical that those monitoring the patients are not needlessly distracted or hampered in their efforts to care for the patients.

The physician and staff must be free to monitor continually each patient and must be readily available in the event that an emergency develops with any individual patient. The person whose behavior ultimately controls the effectiveness of the therapy, however, is the patient. If a patient adheres to the prescribed diet and schedule of treatments, he or she has the potential for living a normal, productive life. As a result, an atmosphere of mutual support and assistance between the medical staff and patients, and among the patients themselves, becomes as crucial to the patient's rehabilitation and effective therapy as the dialysis treatments. This atmosphere of mutual support and assistance is

shattered by the disruptive patient who interferes not only with her own care, but also that of her fellow patients.

No individual should be compelled to serve another individual. This principle is embodied in the Thirteenth Amendment and fundamental to the concept of a free society. In the case of a renal physician, compelling his or her services to a specific patient cannot reconstruct the relationship and environment necessary for effective therapy. On behalf of its members, renal physicians, and the medical community as a whole, the Renal Physicians Association urges this Court to reaffirm this Thirteenth Amendment principle and free Dr. Weaver from the involuntary servitude and violation of his medical ethics imposed upon him by the California Supreme Court.

SUMMARY OF ARGUMENT

It is a long-standing and familiar rule of equity that equity will not specifically enforce a contract for personal services. This Court noted long ago that courts of equity should not specifically enforce contracts for personal services. *See, e.g., Rutland Marble Co. v. Ripley,* 77 U.S. (10 Wall.) 339 (1870). Although equitable enforcement is primarily an issue of state law, in the present case the California Supreme Court's disregard of the well established equitable rule, coupled with the procedural delay under the state's judicial system, raise the substantial federal question of whether the California Supreme Court's decision runs afoul of the Thirteenth Amendment prohibition of involuntary servitude. The temporary order issued by the trial court has thus far compelled the doctor to treat Ms. Payton for two years. As noted in Petitioner's Brief for Certiorari, it will be at least two years before oral argument is even heard in the California Court of Appeals. Petitioner's Brief for Certiorari at 14. During that delay, Dr. Weaver is an involuntary servant of Ms. Payton, singled out by the state to serve her against his will.

Involuntary servitude exists whenever an individual is compelled to provide personal services against his will to another

individual. A physician's duties to a patient are personal to that patient, and those services do not fall within the category of compulsory services considered by this Court to be acceptable under the Thirteenth Amendment, that is, service performed for the sovereign for the general public good. Compulsory service from one specific individual to another to benefit the private individual, the type of involuntary service at issue in this case, constitutes involuntary servitude within the meaning of the Thirteenth Amendment as interpreted by this Court.

ARGUMENT FOR GRANTING THE WRIT

I. The California Supreme Court Has Decided An Important Question Under The Thirteenth Amendment Which Has Not Been, But Should Be, Settled By This Court.

This case presents the Court with a direct order of a state supreme court compelling an individual to provide services to another individual against his will. The paucity of decisions from the Court in this area is testimony to its uniqueness and the few instances in which any state or the federal government has sought to compel personal services, directly or indirectly, in any form. This Court must therefore address this fundamental issue and provide some guidance for the Association and its members, and the medical community as a whole, whose freedom is at stake.

II. The Thirteenth Amendment Prohibits Any Individual From Being Submitted To Involuntary Servitude.

The decision of the California Supreme Court compelling a physician in private practice to provide medical treatment to a particular individual conflicts directly with every decision of this Court prohibiting involuntary servitude under the Thirteenth Amendment. The constitutional issue in this case arises under Section 1 of the Thirteenth Amendment, which provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. U.S. Const. amend. XIII.

The Thirteenth Amendment embodies a fundamental principle deeply rooted in the history of this nation—that no man should be compelled against his will to personally serve another. Implicit in the wording of the Amendment, "neither slavery nor involuntary servitude", was the framers' intent that the Amendment prohibited not only race related slavery, but also any form of compulsory labor from one individual to another. This Court has accepted and repeatedly affirmed such an interpretation of the Amendment's prohibition of involuntary servitude:

> While the immediate concern was with African slavery, the Amendment was not limited to that. It was a charter of universal freedom for all persons, of whatever race, color or estate, under the flag. The words involuntary servitude have a "larger meaning than slavery." *Bailey v. Alabama*, 219 U.S. 219, 241 (1910), citing *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36, 69 (1872).

The Thirteenth Amendment preserves one of the most fundamental constitutional freedoms in that ". . . the undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States." *Pollock v. Williams*, 322 U.S. 4, 17 (1944). In *Pollock*, the Court noted that whatever beneficial intent or valid social policy compulsory labor might serve in a particular instance, the public policy and Thirteenth Amendment prohibition against involuntary servitude is paramount. In accordance with this Court's decisions and the Thirteenth Amendment, therefore, the Petitioner, Dr. Weaver, may not be compelled by a state court to provide personal services to the Respondent, Brenda Payton.

III. Involuntary Servitude Within The Meaning Of The Thirteenth Amendment Is The Compulsion Of Personal Services From One Individual To Another Individual.

Involuntary servitude within the meaning of the Thirteenth Amendment exists whenever a specific individual is compelled to provide personal services to another individual. In one of the few

lower court decisions examining the nature of involuntary servitude in depth, Justice Harlan, then speaking for the Seventh Circuit Court of Appeals, concluded:

> [t]he vital question remains whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. *One who is placed under such constraint is in a condition of involuntary servitude, — a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction. Arthur v. Oakes*, 63 F. 310, 318 (7th Cir. 1894) (emphasis added).

In *Arthur v. Oakes*, as in the present case, the involuntary servitude was imposed by means of a state court order prohibiting individual employees from quitting the service of a specific party. For the reasons stated above, the Seventh Circuit Court of Appeals concluded that such an order could not withstand constitutional scrutiny. The decision stands as direct authority to prohibit as a violation of the Thirteenth Amendment any state court order compelling a private individual to provide personal services to another individual.

The rationale of Justice Harlan's opinion also serves to distinguish those few cases in which compulsory personal services have been permitted by the Court. As a member of society, an individual may be compelled by legislation to perform services to the sovereign for the general good. For example, a citizen may be required by legislation to work on the repair of public roads or to serve in the military. *Butler v. Perry*, 240 U.S. 328 (1916); *Selective Draft Law Cases*, 245 U.S. 366 (1918). Under such circumstances, a general duty to the sovereign is imposed upon a group of individuals for the general good. Such societal obligations compelled by appropriate state or federal legislation are not involun-

tary servitude within the meaning or intent of the Thirteenth Amendment.

It is the nature of the servitude, not the purpose of imposing the servitude, which determines whether a violation of the Thirteenth Amendment has occurred. As Justice Harlan asserted in *Arthur v. Oakes*:

> It is supposed that these principles [that contracts for personal services should not be specifically enforced] are inapplicable or should not be applied in the case of employes of a railroad company, which, under legislative sanction, constructs and maintains a public highway primarily for the convenience of the people, and in the regular operation of which the public are vitally interested. Undoubtedly the simultaneous cessation of work by any considerable number of the employes of a railroad corporation, without previous notice, will have an injurious effect, and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employes and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation restraining alike employes and employers so far as in the existence, maintenance and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employe from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him against his will, to remain in such service, or actually to perform the personal acts required in such employments, or compel such managers against their will, to keep a particular employe in their service. 63 F. at 319.

The *Oakes* decision makes two points clear: (1) that a general duty to the sovereign imposed by legislation for the general good is distinguishable for purposes of the Thirteenth Amendment from labor coerced from one individual to another, which is a violation of the Thirteenth Amendment; and (2) that assertions of public policy or the quasi public function of the individual sought to be coerced cannot constitutionally transform involuntary servi-

tude from one individual to another into a general duty to the sovereign for the general good.

Compelling a physician in private practice to provide medical treatment to a particular individual is the very type of coerced labor that the Thirteenth Amendment was intended to eliminate. Vague, self-serving assertions of public policy or the public good cannot mask the unconstitutional involuntary servitude imposed upon Dr. Weaver as some form of general duty to the sovereign for the general good. In fact, few public policies are as deeply ingrained in American jurisprudence as the policy against compulsory personal service from one individual to another. This policy is embodied in the Thirteenth Amendment, and violated by the decision of the California Supreme Court compelling Dr. Weaver to provide services to Brenda Payton.

IV. There Is No Question That The California Supreme Court Decision Is Compelling Personal Services From One Individual, Dr. Weaver, To Another Individual, Brenda Payton, So As To Constitute An Involuntary Servitude Within The Meaning Of The Thirteenth Amendment.

It is difficult to posit a court order more clearly compelling involuntary personal services from one individual to another or to posit a relationship less conducive to such an order. As pointed out in Petitioner's brief, Dr. Weaver has no choice but to be "... on a 24-hour call to this patient, disrupting his medical practice, his care for his other patients, his home life and his freedom at large." Petitioner's Brief for Certiorari at 8. Ms. Payton, on the other hand, has several choices available to her.[3] For example, Ms. Payton could voluntarily enter a drug therapy program which

[3]The trial court noted in Finding of Fact 21 as follows:
Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care. See Appendix E.

would arrange for her dialysis. She could request that the court appoint a conservator who would then arrange for her needed treatment. The most obvious alternative, and the one she appears disinclined to choose, is to cooperate in her therapy to insure her own effective treatment. For six years Dr. Weaver has attempted to treat Ms. Payton. She has consistently and repeatedly refused to cooperate with Dr. Weaver and adhere to his prescribed therapy. Petitioner's Brief for Certiorari at 5-6. She arrives intoxicated at the facility, which requires that several members of the staff prepare her for treatment at the expense of the other patients at the facility. *Id.* at 6. She has on several occasions interrupted her treatment either by demanding that she be disconnected from the machine or by actually pulling the dialysis needle from the connecting shunt in her leg, delaying other patients' access to the machine and causing contamination of the treatment area. *Id.* at 6. At the time of Dr. Weaver's notice of termination, her behavior had reached the stage where he had found it necessary to have her individually monitored, which is not only economically wasteful but a threat to the effective monitoring of the other patients. *Id.* at 6.

In addition to the strain placed on staff monitoring efforts, Ms. Payton's conduct places a severe strain on the other patients. As noted earlier, dialysis is a routine procedure that can afford a patient the opportunity to lead a normal life. An essential element of effective dialysis treatment is personal therapy and rehabilitation to promote a sense of normalcy in the lives of the patients; yet Ms. Payton's behavior at Dr. Weaver's facility makes an atmosphere of normalcy impossible. She screams obscenities at Dr. Weaver and members of his staff and must often be restrained until she can be calmed down. *Id.* at 6. She has exposed her genitals to nurses and to other patients and has disconnected herself from her dialysis machine, resulting in blood spewing from her leg. *Id.* at 6. These episodes are frequent and are played before a captive audience of as many as thirty patients undergoing dialysis. *Id.* at 6. The only alternative for these patients is to either endure Ms.

Payton's outbursts and disruptions in their medical treatment or give up the physician upon which they rely.

Moreover, during the six years that Dr. Weaver has been treating Ms. Payton, Ms. Payton's failure to cooperate and follow her physician's orders has made her own treatment an exercise in futility.

Ms. Payton refuses to adhere to the diet and schedule of dialysis treatments prescribed by Dr. Weaver. Despite her chronic condition, for example, she continues to use barbiturates and other potentially lethal drugs. *Id.* at 6. Since she has no kidney function, these drugs cannot be metabolized and excreted by her body and therefore remain in her system until she is dialyzed. Her drug abuse also leads to other complications, such as dangerously low blood pressure which causes seizures or convulsions during dialysis. *Id.* at 6.

The delay caused by her disruptive behavior often precludes Ms. Payton from receiving the full dialyzing treatment she requires. If she is not dialyzed for the prescribed length of time, her body cannot be fully drained of all the metabolic end products and toxins that accumulate between treatments. Her failure to adhere to the diet prescribed by Dr. Weaver further complicates her condition. It is critical that a patient with chronic kidney failure control her fluid and food intake between dialysis treatments. A dialysis treatment lasts only for a finite period of time and any fluids not drained from the body during the dialyzing session remain there until the next treatment. Furthermore, when large amounts of fluid accumulate in the bloodstream, a rapid draining of the fluid such as occurs during dialysis can result in a loss of blood pressure, and consequently, seizures or convulsions. Ms. Payton consistently ignores her prescribed diet and liquid intake limitations, gaining as much as forty pounds between dialysis sessions. *Id.* at 7.

A court of equity cannot restore the spirit of cooperation necessary for the continued viability of the contract, nor can it act

as a watchdog in perpetuity to assure proper performance. As Justice Harlan explained:

> The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employe engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable. *Arthur v. Oakes*, 63 F. at 318.

It is this unsatisfactory private relationship which the California Supreme Court is attempting to perpetuate against Dr. Weaver's will and his best medical judgment. After six years, Dr. Weaver sees no alternative but to terminate the physician/patient relationship. No court can construct and compel such an intimate relationship where none exists without violating the Thirteenth Amendment.

V. As A Matter Of State Law, There Is No General Duty To The State Pursuant To Which Dr. Weaver May Be Compelled To Provide Services To Any Patient.

As noted above, in the absence of a general duty to the sovereign to provide services for the general good, the Thirteenth Amendment prohibits any individual from being compelled to provide personal services against his or her will. In the trial court, the Respondent attempted to argue that section 1317 of the California Health & Safety Code mandated that Dr. Weaver

provide his services to any and all dialysis patients. The trial court, in interpreting section 1317 and rejecting Respondent's position, noted in Findings of Fact 18 and 20:

> A patient, like Petitioner [Ms. Payton], with end-stage renal disease, will not become a medical emergency if that person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.
>
> * * * *
>
> Petitioner suffers from end-stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as emergency care within the context of Health and Safety Code §1317 or otherwise. See Appendix E.

Nor does the state of California make it a prerequisite to licensing physicians that they accept any patient for treatment, *Agnew v. Parks*, 172 Cal. App. 2d 756, 343 P.2d 118 (1959),[4] or forbid a physician from terminating the patient/physician relationship. *Lathrope v. Flood*, 6 Cal. Unrep. 637, 63 P. 1007 (1901).[5] The

[4]It is a generally accepted principle of common law that a doctor need not enter into a patient/physician relationship upon terms and conditions he or she finds unacceptable. *See, e.g., Dabney v. Briggs*, 219 Ala. 127, 121 So. 394 (1928); *Vidrine v. Mayes*, 127 So.2d 809 (La. 1961). Certainly, a physician may impose as a condition for entering into a contractual relationship with a patient that the patient follow the prescribed treatment. In the instant case, Dr. Weaver agreed to continue to provide dialysis treatment to Ms. Payton so long as she followed the conditions set forth in the trial court's initial order. In effect, a new patient/physician relationship was created upon set terms and conditions. Ms. Payton's failure to abide by any of those conditions precludes her from seeking further services from Dr. Weaver.

[5]State courts have held that it is the duty of the patient to use ordinary prudence for his or her self and failure to do so will preclude the patient from holding the physician answerable for the eventual consequences. *See, e.g., Leadingham v. Hillman*, 224 Ky. 177, 5 S.W.2d 1044 (1928). Similarly, courts have found that in the exercise of due care, the patient must submit to the treatment prescribed by the physician. *See, e.g., Steele v. Woods*, 327 S.W.2d 187 (Mo. 1959). As noted,

(footnote continued on following page)

mere existence of a licensing statute for physicians does not compel a physician to provide services to whoever requests them, *Hur-*

(footnote continued from previous page)

Ms. Payton failed to adhere to any of the conditions imposed by the court.

The conditions were that Ms. Payton:

1. keep all appointments at their scheduled time;
2. refrain from all use of alcohol;
3. refrain from all use of drugs, except those prescribed by her physician;
4. maintain prescribed dietary habits;
5. in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimens; and
6. enter into and participate in good faith in a program of regular psychotherapy and/or counselling. (See Appendix E).

The trial court's findings of fact set forth her violations as follows:

6. On numerous occasions from May 4, 1979 to the date of hearing on this matter Petitioner failed and neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.
7. On numerous occasions from May 4, 1979 to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbiturates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.
8. * * * *
9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.
10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.
11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter, Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.
12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part. See Appendix E.

ley v. Eddingfield, 156 Ind. 416, 59 N.E. 1058 (1901), and California courts have recognized that a physician in that state may not be compelled to accept a particular patient for treatment, *Agnew v. Parks, supra; see also, Hiser v. Randolph,* 126 Ariz. 608, 617 P.2d 774 (1980), and may terminate the relationship with his or her patient upon providing adequate notice and an opportunity to seek alternative care. *See, e.g., Lathrope v. Flood, supra; see also, Gray v. Davidson,* 15 Wash. 2d 257, 130 P.2d 341 (1942). In the case at bar, Ms. Payton had eighteen months between being initially advised of Dr. Weaver's intention to terminate the relationship and his second notification. She clearly had adequate notice and ample opportunity to make arrangements for her care. Accordingly, Dr. Weaver clearly satisfied all his obligations under state common law as Ms. Payton's physician and there is no unanswered question of state law to be addressed.[6]

In summary, Canon VI of the American Medical Association's Principles of Medical Ethics provides that "a physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services." AMA Principles of Medical Ethics No. VI. For the reasons stated

[6]To further illustrate the distinction between compelling services pursuant to a general duty to the sovereign for the general good and compelling private personal services from one individual to another, it should be noted that courts have a limited power to appoint counsel in criminal defense cases. *Powell v. Alabama,* 287 U.S. 45, 73 (1932). *Scott v. Illinois,* 440 U.S. 367, 373 (1979). There are few functions more singularly limited to the sovereign than the prosecution of criminal offenses. As a necessary constitutional adjunct to the sovereign's prosecution of criminal offenses, there must be representation for the criminal defendant. Accordingly, attorneys may be required as special officers of the court to provide their services to the state as defense counsel. Pursuant to this general duty to the sovereign, an individual attorney may be compelled to provide services to a particular defendant, but that does not transform the general duty owed to the sovereign into a personal servitude to a specific individual. In contrast, as noted above, there is no duty to the state on the part of the physician to provide health care services to any patient.

above, the California Supreme Court's decision compelling Dr. Weaver to provide dialysis treatments to Ms. Payton against his will and against his best medical judgment has placed him in involuntary servitude in violation of the Thirteenth Amendment. On behalf of its members and the members of the medical community, the Association is equally concerned with the violation of the Canons of Medical Ethics which the California Supreme Court has imposed on Dr. Weaver. As such, the decision of the California Supreme Court threatens the integrity of the medical profession and has a chilling effect on a physician's medical judgment in the provision of medical services. This Court is therefore urged to examine this critical issue for its ramifications for the medical community and health care in addition to the constitutional dimensions of the issue herein presented.

CONCLUSION

For the reasons stated herein, the Amicus Curiae, the Renal Physicians Association, respectfully urges this Court to grant the Petition For a Writ of Certiorari to the California Supreme Court.

Dated: July 9, 1981

Respectfully submitted,

ROBERT J. PRISTAVE
Counsel of Record
LINDA A. MALONE
DREW P. KAPLAN
Attorneys for Amicus Curiae

Of Counsel:

ROSS, HARDIES, O'KEEFE,
BABCOCK & PARSONS

APPENDIX A

1st Civil No. 50094

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EN BANK

PAYTON, Plaintiff,

Respondent and Appellant

v.

WEAVER, JR., ET AL.,

Defendants, Appellants and Respondents.

Petition for hearing is granted, and the cause and defendants' petition for supersedeas are transferred to this court. The petition for writ of supersedeas is denied. The cause is re-transferred to the Court of Appeal, First District, Division One, for determination of the pending appeals. The order of the Alameda County Superior Court, dated June 30, 1980, shall remain in effect during the pendency of the appeals.

The motion for reconsideration of the temporary stay granted February 24, 1981 is denied. The motion to join Alameda County as a party to this proceeding is denied.

BIRD,

Chief Justice

TOBRINER,

Justice

MOSK

Justice

RICHARDSON,

Justice

NEWMAN,

Justice

Jusitce

Justice

Filed on March 11, 1981

APPENDIX B

Court of Appeal of the State of California
In And For The
First Appellate District
Division One

Brenda Marie Payton, *Plntf.., Rspdt., and Applt.* *vs.* John C. Weaver, Jr., M.D., et al., *Dfdnts., Applts., and Rspdts.*	No. 50094 Alameda Superior Court No. 520530-5

BY THE COURT:

The petition for writ of supersedeas is granted. The effect of the order dated June 30, 1980, for stay of execution of judgment and continuation of temporary order in Alameda County Superior Court Action No. 520530-5 Payton v. Weaver, et al., is hereby stayed pending final determination of the appeal on file herein.

Dated February 20, 1981

Elkington, J. Acting P.J.

APPENDIX C

Wilson & Casey
Law Offices
927 Broadway
Oakland, California 94612
(415) 465-6511
Attorney for Petitioner

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON, *Petitioner,* *vs.* JOHN C. WEAVER. M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA of OAKLAND, INC., AND DOES I through XX, inclusive, *Respondents.*	No. 520530-5 ORDER FOR STAY OF EXECUTION OF JUDGMENT AND CONTINUATION OF TEMPORARY ORDER

This matter came on regularly for hearing before the above entitled Court of June 23, 1980, pursuant to Petitioner's Motion of Stay of Execution of Judgment and Continuation of Temporary Order made orally on June 18, 1980 and filed on June 23, 1980. WARREN B. WILSON and JOANNE F. CASEY appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos and Stromberg, by ROBERT RUSKY, appeared as attorney for Respondents ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by JOHN H. DICKERSON, appeared as attorney for Respondents PROVIDENCE HOSPITAL; CHARLES

BOND as attorney for Respondents, JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC.

The Court considered Petitioner's motion and heard oral arguments on the matter from all parties and the cause was submitted for decision.

In making the following orders to preserve the status quo pending appeal, the Court has taken into consideration the gravity of the consequences to Petitioner of its order and also the possibility that Petitioner, without adequate medical treatment, could die before her appeal is perfected, thereby rendering the issues of the appeal nugatory.

Under the inherent power to exercise reasonable control over all proceedings connected with the litigation before it, vested in this Court under *Code of Civil Procedure* §187 and also under the scope of the trial court's authority as specifically ennunciated in *City of Pasadena v. Superior Court,* 157 Cal. 781 (1910), the Court makes the following orders:

1. That execution of its judgment and order dated June 30, 1980, is hereby stayed pending the perfection of Petitioner's appeal.

2. That the temporary order made by this Court on April 10, 1980 that Respondents JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC. continue to provide hemodialysis to Petitioner on a regular basis be continued pending Petitioner's appeal.

3. That Petitioner is to cooperate with Respondent JOHN C. WEAVER. M.D. and follow all of his orders and directions to the best of her ability to do so.

Dated: June 30, 1980.

RICHARD BARTALINI
Judge of the Superior Court

APPENDIX D

HANSON, BRIDGETT, MARCUS, VLAHOS & STROMBERG
STEPHEN B. PECK
333 Market Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 777-3200
Attorney for Respondents
ALTA BATES HOSPITAL and HERRICK HOSPITAL

FILED
Jun 30, 1980
Rene C. Davidson,
County Clerk
By_____
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON,
Petitioner,

vs.

JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA OF OAKLAND, INC., and DOES I through XX, inclusive,
Respondents.

NO. 520530-5
JUDGMENT DENYING PEREMPTORY WRIT OF MANDATE AND INJUNCTION

Entered In
Judgement Book
Book (Reel)
601 Pg 3
Jun 30 1980
Rene C. Davidson,
County Clerk

This matter came on regularly for hearing before the above-entitled court on April 10, 11 and 17, 1980, the Honorable Richard Bartalini, Judge Presiding, pursuant to the verified Petition, Amended Petition and Second Amended Petition of BRENDA MARIE PAYTON and the alternative writ of mandate issued under the seal of this Court and served on respondents in the manner provided by law. Warren Wilson and Joanne Casey ap-

peared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos & Stromberg, by Stephen B. Peck, appeared as attorneys for Respondents, ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by Phillip Berry appeared as attorneys for Respondent PROVIDENCE HOSPITAL; Charles Bond, Professional Law Corporation, by Charles Bond and Robin G. Pulich appeared as attorneys for Respondents BMA OF OAKLAND, INC., and DR. JOHN C. WEAVER, JR.

The record of the proceedings before the Honorable Richard Bartalini having been received into evidence and having been examined by the Court, the Respondents ALTA BATES HOSPITAL, HERRICK HOSPITAL and PROVIDENCE HOSPITAL having filed an answer to the Petition, Amended Petition and Second Amended Petition, each side having submitted memoranda of points and authorities in support of their respective contentions, fully argued the matter orally before this Court, and the Court having heard the testimony of BRENDA MARIE PAYTON, Ronald Reuss, Wayne Hardwick, M.D., Donald Block, M.D., James Rosen, M.D., JOHN C. WEAVER, JR., M.D., Leroy Lewis, Craig Dennis, M.D., Margaret Kelley, and Juanita Hill, the cause having been submitted for decision.

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioner, BRENDA MARIE PAYTON, requests that a peremptory writ of mandate and a permanent injunction be issued herein against Respondents JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL and BMA OF OAKLAND, INC. be and hereby are denied, for the reason that said Respondents are found to have no legal duty to provide, or to continue to provide, non-emergency regular hemodialysis treatements (sic) to Petitioner.

2. The alternative writs of mandate heretofore issued in this action be and hereby are discharged; and

3. Each side shall bear their own costs and attorneys' fees in this action.

DATED: June 30, 1980

THE HONORABLE
RICHARD BARTALINI

Judgment entered on , 19 , in the Judgment Book, Volume No. , Page .

, *Clerk*

By
Deputy Clerk

APPENDIX E

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Attorney for Defendant
PROVIDENCE HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON *Plaintiff,* *v.* JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, et al. *Defendants.*	NO. 520530-5 FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing and extensive oral and documentary evidence having been received and the matter having been argued and submitted for decision and good cause appearing therefore, it is hereby ordered, adjudged and decreed that:

PROCEDURAL MOTION

1. Petitioner's Motion to amend her pleadings for a fourth time by the addition of an Amended Second Petition for Writ of Mandate or alternatively for Injunctive Relief to Conform to Proof is denied.

FINDINGS OF FACT

1. Providence Hospital of Oakland, Herrick Hospital and Alta Bates Hospital are separate and distinct corporate entities currently doing business in the County of Alameda as health care providers. John C. Weaver, Jr., M.D., is an individual duly licensed to practice medicine in the State of California and a fully qualified and experienced specialist in the field of nephrology. BMA of Oakland, Inc. is a separate corporation and medical care provider which operates and has operated an out-patient clinic housed in facilities of Providence Hospital.

2. Petitioner, Brenda Marie Payton, is an individual with a chronic kidney ailment requiring her to have periodic dialysis treatment. For approximately 5 years as a patient of Dr. Weaver and an out-patient of BMA of Oakland, Inc. she has received hemodialysis treatment. She also during this time has on occasion received peritoneal dialysis. Both forms of dialysis treatment purge the body fluids of poisons and toxic substances harmful to good health and life.

3. On several occasions during the 5 years that he has attempted to provide her with medical care, Dr. John C. Weaver, Jr. has had to advise Petitioner that he could no longer act as her doctor owing to her failure to follow medical instructions and her disruptive and harmful activities which constitute a danger to herself and to other patients. Shortly prior to the original filing of the petition in this matter, Dr. John C. Weaver, Jr., gave notice of his intent to withdraw from the physician-patient relationship. A final letter to Petitioner was sent by Dr. Weaver on March 3, 1980 notifying her that he would no longer treat her after April 5, 1980.

4. As a result of the first Court hearing on the matter herein it was stipulated by Petitioner, Dr. John C. Weaver, Jr., BMA of Oakland, Inc. and Providence Hospital as follows:

1) The patient will keep all appointments at their schedule time;

2) The patient will refrain from all use of alcohol;

3) The patient will refrain from all use of drugs, except those prescribed by her physician;

4) The patient will maintain prescribed dietary habits; and

5) The patient will in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen.

The obligations of this order are interdependent so that the obligation to render medical care is dependent upon the patient's compliance with the conditions of this order.

During this interim period of sixty (60) days, the patient shall seek to make other arrangements for her medical care and Respondent Weaver shall cooperation (sic) in this process.

Providence Hospital will accept Petitioner as a patient provided she is formally admitted by and under the care of a properly qualified member in good standing of its hospital staff and cooperates in good faith as a patient, giving due and reasonable consideration to the needs and rights of other patients.

This Stipulation was entered into following negotiations amongst attorneys for the parties affected. The Stipulation was made on or about May 4, 1979 and thereafter incorporated as a part of the Court's Order.

4*. Thereafter on or about July 10, 1979, Petitioner and Dr. John C. Weaver, Jr. and BMA of Oakland, Inc. and Providence Hospital reaffirmed to the original Stipulation and added a sixth condition as follows:

6) The patient will enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

*Numbered as in original.

This affirmation and additional condition was entered into following negotiations amongst attorneys for the parties affected. On or about July 10, 1979 and thereafter incorporated as a part of a Court Order.

6. On numerous occasions from May 4, 1979 up to the date hearing on this matter Petitioner failed and neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.

7. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbituates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.

•

9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.

10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.

11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.

12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her

*Numbered as in original; no material deleted.

failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part.

13. Petitioner's failure to meet the above conditions has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.

14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of Petitioner under the facts shown herein.

15. Petitioner has not been discriminated against on the basis of race or lifestyle or at all. Petitioner has not been refused dialysis by any named Respondent on the basis of any activity on the part of Respondent Dr. Weaver, Jr. or Respondent BMA of Oakland.

16. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Alta Bates Hospital. Alta Bates Hospital denied Petitioner's application for admissions to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Alta Bates Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Alta Bates Hospital's denial thereof, Petitioner has had no further contacts with Alta Bates Hospital and has never received hemodialysis treatments at Alta Bates Hospital.

17. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Herrick Hospital. Herrick Hospital denied Petitioner's application for admission to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Herrick Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Herrick Hospital's denial thereof, Petitioner has had no further contacts with Herrick Hospital and has never received hemodialysis treatments at Herrick Hospital.

18. A patient, like Petitioner, with end stage renal disease, will not become a medical emergency if that person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.

19. Regular out-patient dialysis treatment of chronic kidney patients requires expertise and equipment not normally found in emergency rooms.

20. Petitioner suffers from end stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health and Safety Code §1317 or otherwise.

21. Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care.

22. It is neither reasonable nor necessary to require any of the defendants to provide Petitioner with hemodialysis on a regular out-patient or in-aptient basis while Petitioner exercises complete freedom to indulge in the use of dangerous drugs, al-

cohol and the other excesses. (Although apparently without any personal control).

CONCLUSIONS OF LAW

1. Petitioner at this stage is not entitled to amend her pleadings to conform to proof.

2. Petitioner by frequent violations of the conditions of stipulations and orders herein is estopped to claim any further relief under the pleadings. By themselves said stipulations and orders do not, however, constitute a final determination and adjudication of the rights, duties and responsibilities of the parties. The findings of facts and conclusions of law herein constitute a final determination and adjudication of the rights, duties, and responsibilities of the parties.

3. Petitioner has no absolute right to dialysis treatment under the Hill-Burton Act (41 USC §291 *et seq.*) or any of the administrative regulations thereunder from any Respondent. Under said Act and regulations, the hospitals and BMA of Oakland are free to determine eligibility for services, insofar as treatment is reasonably refused and due process has been afforded and a reasonable volume of services is afforded to indigents. The Court finds no violation of either the Hill-Burton Act or the Civil Rights Act (42 USC §2000d *et seq.*) herein.

4. Petitioner has not been discriminated against on the basis of race, lifestyle or at all.

5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, Petitioner has no legal right to compel medical service from any of the Respondents for chronic or regular care of her kidney problems through dialysis.

6. Should Petitioner present herself at any emergency department of any of the Respondent health care providers claiming a need to emergency care, a determination shall be made at that time by qualified physicians to see whether her condition

constitutes an emergency and she is therefore entitled to medical services within the terms of §1317 of the Health and Safety Code.

7. There is no present duty on the part of any Respondent requiring any one of them to provide Petitioner with regular out-patient dialysis treatment.

8. Dr. John C. Weaver, Jr. has given sufficient notice to Petitioner and has discharged all obligations imposed by the patient-physician relationship with Petitioner.

9. Respondent John C. Weaver, Jr., M.D. is discharged from any further obligation to provide medical care to Petitioner unless he shall voluntarily accept such obligation in the future.

10. Respondent BMA of Oakland, Inc. is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

11. Respondent Providence Hospital is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

12. None of the Respondent hospitals is required to provide to Petitioner as part of its emergency treatment hemodialysis on a regular out-patient basis.

13. Petitioner shall take nothing by reason of her "Petition for Writ of Mandate", "Amended Petition for Writ of Mandate", "Second Petition for Writ of Mandate", or any other pleading herein. Petitioner's Request for Mandatory Injunction is denied.

14. Neither Alta Bates Hospital nor Herrick Hospital have violated the Hill-Burton Act (42 USC §291, *et seq.*), the Civil Rights Act (42 USC §2000d, *et seq.*), or Health and Safety Code §1317 in denying Petitioner regular out-patient hemodialysis treatments.

DATED: June 19, 1980

Judge of the Superior Court

Office-Supreme Court, U.S.
FILED
JUL 8 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2094

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D., and BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

AMICUS CURIAE BRIEF OF UNION OF AMERICAN PHYSICIANS AND DENTISTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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AMICUS CURIAE BRIEF OF UNION OF AMERICAN PHYSICIANS AND DENTISTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

I. Interest of the Amicus Curiae

The Union of American Physicians and Dentists (UAPD) is an independent trade union, registered with the United States Department of Labor, representing over 25,000 licensed physicians and dentists nationwide. The charter objectives set forth in the UAPD Constitution include the advancement of the highest quality of medical and dental care, maintenance of proper working conditions and, perhaps most importantly, obtaining and preserving the individual freedom of action necessary for the success of a physician's professional endeavors.

In order to promote that (1) quality of service, (2) maintenance of proper working conditions and (3) freedom of professional judgment, it is a stated policy of the UAPD that:

> The health professional has the right to render [medical] services in dignity. . . . Where third parties intrude between the doctor and the patient, in such a manner as to deprive the doctor of this right, as with any other honorable working person, the doctor has the right not to serve such third parties.

The UAPD respectfully submits this Amicus Curiae Brief, therefore, in the interest of preserving the right of a health professional to withdraw from the personal service of a patient whose conduct attacks his professional dignity and endangers the care of other patients. We respectfully submit that neither Ms. Payton, nor the California Supreme Court, has the right to coerce continuing personal service where those circumstances and dangers exist.

II. The Issues Addressed By The UAPD

A. The Absence of Any Statutory Duty

In this proceeding, the UAPD does not challenge any requirement that providers of emergency care serve persons in need of emergency care (*California Health and Safety Code* § *1317*); nor does it dispute herein the propriety of regulations determining federal elgibility standdards for indigent patients (41 U.S.C. §§ 291, et seq.) or requirements that medical services be provided without regard to any patient's race, creed, sex, color or national origin (42 U.S.C. §§ 2000, et seq.). Such legislation may be

a valid exercise of state and federal power, consonant with the ethical obligations of practitioners of the healing arts.

On the contrary, the UAPD is vitally interested in this case because of the undisputed fact that there was no violation of any statutory or other duty owed to Ms. Payton. (Findings of Fact Nos. 15 and 17; Conclusions of Law Nos. 3, 4 and 5.)[1]

B. Maintenance of a Viable Physician-Patient Relationship

More importantly, the UAPD feels that an integral part of the patient-physician relationship is the ability of a physician to withdraw from a case if his medical orders are ignored. Oftentimes, that ability to withdraw is the one factor that convinces a patient of the importance of the doctor's advice. Further, as a professional, a physician should not be placed in the frustrating position of overseeing the care of a patient whose health is deteriorating because of his or her refusal to accept medical advice.

The trial court found that Ms. Payton failed to keep appointments (Findings of Fact No. 6), used barbiturates contrary to doctor's orders (Findings of Fact No. 7) and failed to abide by dietary and liquid restrictions essential to successful dialysis treatment (Findings of Fact Nos. 9-13). Under those circumstances, a physician must be free to exercise his professional judgment and withdraw from the relationship. In order to be true to his professional responsibility, where the physician-patient relationship has

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[1]The Findings of Fact and Conclusions of Law issued by the trial court are marked as Appendix E to the Petition for Writ of Certiorari, filed June 9, 1981.

become unworkable—as the trial court found—the physician must be free to withdraw.[2]

C. The Physician's Obligation to Innocent Patients

The UAPD also asks this Court to recognize the professional obligation owed by a physician to all of his patients. When the conduct of one patient threatens the health and safety of others, a physician must be free to exercise his judgment to protect those innocent patients. Since the trial court found that Ms. Payton's "disruptive, abusive, and unreasonable" conduct "trespass[ed] upon the rights of other patients . . . endanger[ing] their rights to full and adequate treatment" (Findings of Fact No. 13), the UAPD is concerned that the California Supreme Court has ordered that danger to continue. When Dr. Weaver and BMA's staff cannot adequately supervise Ms. Payton's conduct so as to alleviate that danger, the California Supreme Court certainly cannot do so.

D. The Rights of Physicians as United States Citizens

Finally, a physician must enjoy the same Thirteenth Amendment rights guaranteed to the rest of America's citizenry. The UAPD wholeheartedly adopts the argument at pages 18 through 25 of the Petition for Writ of Certiorari, asserting the inalienable right not to be held in the involuntary personal service of another individual. Without questioning the obligation of a physician to render

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[2]The UAPD does not challenge herein the procedural steps that a physician must meet prior to that withdrawal. The trial court found that Dr. Weaver and BMA complied with each of those steps. (Conclusion of Law No. 8.)

emergency care when required,[3] the coerced maintenance of a continuing, thrice-weekly dialysis service is unconscionable in a free society.

The essence of slavery is one person's knowledge that another is bound into his or her service—by force of law, and pain of imprisonment—no matter how abusive a master he or she may be. We ask that members of the medical profession not be subjected to that badge of slavery by the unfounded and unwarranted order of the California courts.

III. Conclusion

The UAPD's position in this case is dictated by the undisputed facts that: there is no statutory or contractual basis to compel the further rendition of personal medical service, Ms. Payton's needs are chronic rather than emergency in nature, Ms. Payton's conduct is an affront to Dr. Weaver's professional dignity and a danger to his other patients, Dr. Weaver and BMA have duly and lawfully notified her of their desire to terminate ongoing personal services.

In light of those facts, this case does not question the existence of state regulation of medical services, but, rather, its limits. If the California Supreme Court can order continuing personal service under these undisputed facts, then there are no limits to California's power to

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[3]Conclusion of Law No. 6 noted that Ms. Payton could seek emergency treatment from any petitioner, and there is no challenge made to that conclusion. Rather, it is the continuing treatment of a chronic condition that, the UAPD respectfully submits, cannot be compelled.

conscript one private citizen into the long-term personal service of another—even under the most intolerable and demeaning circumstances.

In support of the rights of physicians as professionals and—more importantly—in support of their rights as individual citizens protected by the Thirteenth Amendment, the UAPD respectfully prays that the United States Supreme Court immediately relieve Dr. Weaver and BMA's staff from the null, void and unconscionable order of the California Supreme Court. It is respectfully requested that the California order compelling involuntary servitude be nullified and that Certiorari be granted to re-establish the proper balance between the California Supreme Court and citizens protected by the Constitution of the United States.

DATED: July 6, 1981.

Respectfully submitted,

JEROME BERG
Attorney for Amicus Curiae
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(Exhibit follows)

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June 5, 1981

RECEIVED
JUN 8 1981

Mr. David Ivester
Charles Bond Professional Law Corp.
240 Stockton Street - Suite 500
San Francisco, California 94108

RE: Payton v. Weaver, et al

Dear Mr. Ivester:

In accordance with our telephone conversation, this will confirm that, on behalf of our client, Brenda Payton, we hereby agree that amicus curiae briefs may be filed in the United States Supreme Court in connection with your Petition to that Court for a Writ of Certiorari. We make this agreement with the understanding that you have made the same agreement on behalf of your client, Dr. John Weaver.

Yours sincerely,

Joanne F. Casey

JOANNE F. CASEY

JFC:is

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IN REPLY REFER TO:
SAN FRANCISCO OFFICE

July 6, 1981

Charles Bond
Professional Law Corporation
240 Stockton Street, Suite 500
San Francisco, CA 94108

Re: John C. Weaver, Jr., M.D., et al v. Brenda Marie Payton
U.S. Supreme Court No. 80-2094

Dear Mr. Bond:

This office represents Alta Bates Hospital and Herrick Hospital and Health Center of the East Bay. While our clients are not parties of record to the writ proceedings in California they are parties to the underlying action. Accordingly, Alta Bates Hospital and Herrick Hospital and Health Center of the East Bay hereby consent to the filing of an amicus curiae brief by Union of American Physicians and Dentists in the above-entitled matter.

Sincerely,

HANSON, BRIDGETT, MARCUS,
VLAHOS & STROMBERG

Stephen B. Peck by ms

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July 7, 1981

Charles Bond, Esq.
240 Stockton Street, Suite 500
San Francisco, California 94108

Re: John C. Weaver, Jr., M.D. and BMA of Oakland, Inc., Brenda Marie Payton, Supreme Court No. 80-2094

Dear Mr. Bond:

On behalf of our client, Providence Hospital, we agree that amicus curiae briefs may be filed by Union of American Physicians and Dentists in the United States Supreme Court in connection with your petition for writ of certiorari.

Yours truly,

BERRY & BERRY

Phillip S. Berry

cc: All parties

PSB/jrm-253